

Institutional Guardianship: the Role of Agency in Preserving Threatened Institutional Arrangements

Author: Rich DeJordy

Persistent link: <http://hdl.handle.net/2345/1394>

This work is posted on [eScholarship@BC](#),
Boston College University Libraries.

Boston College Electronic Thesis or Dissertation, 2010

Copyright is held by the author, with all rights reserved, unless otherwise noted.

Boston College
The Carroll Graduate School of Management
Department of Organization Studies

INSTITUTIONAL GUARDIANSHIP:
THE ROLE OF AGENCY IN PRESERVING
THREATENED INSTITUTIONAL ARRANGEMENTS

a dissertation

by

RICH DEJORDY

submitted in partial fulfillment of the requirements

for the degree of

Doctor of Philosophy in Management

August 2010

INSTITUTIONAL GUARDIANSHIP:
THE ROLE OF AGENCY IN PRESERVING
THREATENED INSTITUTIONAL ARRANGEMENTS

RICH DEJORDY

Dissertation Advisor: Dr. Mary Ann Glynn

Abstract

Institutional Theory has responded to early criticism that actors are characterized as passive “cultural dopes” primarily through work on Institutional Entrepreneurship, which implicitly links actors’ agency to institutional change or creation. In this dissertation, I decouple change from agency, examining how actors work to maintain existing institutional arrangements that have come under threat. Through inductive, qualitative analysis of the creation of the Securities Exchange Commission in 1934, focusing primarily on the legislative history, I ground my analysis in the speech events of the actors involved in stabilizing the securities markets as an institution after the Crash begun in 1929, identifying different forms of Institutional Guardianship aimed at preserving different aspects of the institution. I then generalize across actors to present an abstracted model of Institutional Guardianship.

Dedication

To my parents,
Leo & Claire DeJordy,
whose many gifts in my life include the lifetime love of learning
that propelled me to embark on this academic journey.

And to my Cohort,
Dan Halgin, Jamie Ladge, & Ian Walsh,
whose friendship, support, and example made reaching this destination possible,
and the journey itself fun and rewarding, both professionally and personally.

Acknowledgements

I am indebted to the many wonderful people – both from within the program and from what passed for my life outside it over these years – who supported me, believed in me, and gave me the courage necessary to see it through. Though my parents both passed on before I began this journey, the value of education they instilled in their children played no small part in my academic pursuits these past several years, often channeled through my brother John. Though his path in becoming a physician was far less circuitous than mine in becoming a professor, we do share the values instilled by our parents, and the call to challenge ourselves academically and honor them in how we live our lives.

But family is not all about blood, and I would not be who I am today without the people who comprise my chosen family, especially Larry Sousa, Mark Barnett, Rich Farrell, and Terry Link. Larry has been an unending source of inspiration, especially when I have felt uninspired. His creativity and generosity of spirit have not only raised my spirits in times of need, but have also made me more creative and more generative, both key to becoming a better student and scholar. Larry, I shudder to think “Who would I be, if you had not been my friend?” I doubt Mark realizes just how much he has been my rock during this time. Both in times of stormy weather (mine or his) and calm seas, his friendship has been safe harbor, anchor, and mooring. When I have been lost, he has been the constant that helped me find myself and my way safely home. Mark, I am grateful for you providing me with solid ground through what has clearly been “No Ordinary Time.” Rich continues to be the one person who always “gets me” – no matter what unconventional or simply weird state I may be in. It is comforting to know that no matter what hypertext link my mind may follow, there is at least one other person who and can – and will – follow me there. His friendship and understanding through the years have helped me keep my sanity – or what passes for it. Terry’s friendship has unquestionably changed my life. I simply would not have had the nerve necessary to change careers and become a full time student again were it not for his influence. I would not have made it through this process were it not for all of them. I am very grateful for each of

them, and the many other friends who have made this journey possible. I could not possibly name them all, but Michael Capone, Chuck Goddu, Richard & Lucille Halgin, Jeff Igoe, Mark MacFarlane, Fred McNulty, Eric Patrick, and John Pearson all deserve special mention.

I would also like to thank my incredible (and patient) dissertation committee. Mary Ann Glynn took on the challenge of chairing the committee of a fiercely independent and (more than) occasionally stubborn student, yet managed the process (and me) with professionalism, judgment, compassion, and just the right mix of carrots and sticks. Her academic insights and guidance have helped shape not only this dissertation, but how I approach scholarship in general. Jean Bartunek, not only as a member of my committee but as PhD director for my first three years in the program, has imprinted on me the need to never settle – to always strive to make my work better: better theorizing, better understanding, better everything! Further, she has guided me through some difficult situations over the years with finesse and empathy. Throughout the program, Steve Borgatti has found new and innovative ways to set me up for success, enacting a confidence in me that I did not always have in myself. The positive energy and influence he has exerted – and continues to exert – on my life cannot be overstated.

In addition to my committee, many other members of the Organization Studies department have contributed significantly to this work. First, this dissertation finds its roots in my second year project, for which Candy Jones provided invaluable direction as Chair, and Judy Clair advocated the micro-process perspective evident in this work. Second, Mike Pratt not only took the time to help me with my analysis and reassure me about my coding, but always provided encouragement and support. And many other members of the faculty have shaped me and my work in some way. Be it Judy Gordon's teaching practicum that helped get me in the door at Northeastern, Richard Nielsen's imperative (and example) of finding work you are passionate about, Bill Stevenson first introducing the concept of "field theory" as an aside in quantitative methods, or Bill Tolbert's unique perspective on the very definition of scholarship, their collective fingerprints are all over the clay now forming into my academic identity.

Their fingerprints are joined by those of many fellow Ph.D. students who have contributed in various ways to my journey through the program. First among these are my cohort mates: Dan Halgin, whose friendship and enthusiasm made the darkest days of the first years less bleak, and the rest of the time so much more enjoyable; Jamie Ladge, whose ability to juggle everything so well still serves a model of dedication and professionalism, and in whose footsteps I am proud to follow; and Ian Walsh, whose sheer intelligence and creativity in scholarship, while intimidating at times, serves as a standard for which to strive. I have no doubt that, were it not for having been fortunate enough to go through the program with the three of you, I would not have made it through with my sanity in place – if at all.

Beyond my cohort, Ron Dufresne deserves special note as a wise, senior student always willing to take time to provide advice or support; but also Brad Almond, Erica Steckler, Ryan Raffaelli, John Richardson, Kenny Kury, Laura Singleton, Liz (Hamilton) Volpe, and Mamta Bhatt always made the program fun and enjoyable; I am grateful for their humor and camaraderie. And, of course, members of the G-52s and the Boston College Identity Working Group, committed to helping each other in their scholarly pursuits, who gave me valuable feedback in the development of this dissertation and other research.

Finally, there are people and organizations that, some without recognizing it, had a positive influence on my experiences as a doctoral student. In particular, I would like to thank Sara Rynes, who encouraged me and gave me opportunities to participate more fully in the field early on; Roy Suddaby and Matt Kraatz, who always showed enthusiasm for my work and encouragement for my ideas; Doug Creed and Jaco Lok, my co-authors who always treated me as an equal despite my relative inexperience; and the Winston Center for Leadership and Ethics, who took me on as the inaugural Ph.D. Fellow and provided much needed monetary support for my continued studies. Despite the length of these acknowledgements, this list is by no means complete, so I will close by simply saying thanks to everyone who helped and supported me in this journey. I appreciate everything you have all done for me.

TABLE OF CONTENTS

| | |
|---|-----|
| Chapter 1: Introduction and Purpose of the Study | 1 |
| Chapter 2: Theoretical Grounding | 6 |
| Chapter 3: A Stylized History of the Stock Market Before 1934 | 28 |
| Chapter 4: Methods | 36 |
| Chapter 5: Analysis and Emergent Constructs | 49 |
| Chapter 6: Institutional Guardianship: Forms and Implications | 73 |
| Chapter 7: A Generalized Model of Institutional Guardianship | 91 |
| Epilogue | 104 |
| References | 111 |
| Appendices | 120 |

CHAPTER 1: INTRODUCTION AND PURPOSE OF THE STUDY

Man alone transmits to future generations a great number of his acquired ways of behaving. He alone gives reasons for his ways, makes a virtue of them and glorifies them for their very antiquity.
(Hughes, 1939:283-4)

Conceptual Overview

To speak of an *institution* is to refer to an apparently immutable social arrangement. In fact, the underlying concept of persistence is the most (and perhaps only) consistent aspect of research under the rubric of institutional theory over the past 70 years. Yet, persistence, as an object of study in and of itself, has taken a backseat to research focusing on a) the consequences of enduring institutional arrangements, b) how institutional change propagates down to organizations, or c) how institutional entrepreneurs affect change in institutional arrangements. Although early definitions of *institutionalization* described the processes of *infusing values* into social structure (Selznick, 1957; Zucker, 1977) – a process in which leaders of institutions establish and promote connections between practices or structures on one hand, and moral or normative values on the other – research has paid little attention to the mechanisms of persistence in established institutions for the past quarter century, other than to attribute it to “taken-for-grantedness.”

In this dissertation, I revisit the relationship between *infusing value*, *persistence*, and *institutions*, looking particularly at the situation when existing institutional arrangements have come under threat. In particular, I examine how actors facilitate institutional persistence when the “taken-for-granted” nature of the institutional arrangements is lost, or at least threatened, a phenomenon I refer to as *Institutional Guardianship*. By doing so, I decouple change from agency to understand how actors promote persistence when the taken-for-granted nature of institutional arrangements comes into question. Although identified as a condition which may facilitate deinstitutionalization (Oliver, 1992) or institutional entrepreneurship (Clemens, 1993), not all institutional arrangements that come under threat result in significant institutional change. Unfortunately, like ‘the dog that didn’t bark,’ most institutional research overlooks the non-event of persistence, thereby leaving the mechanisms by which the “miracle

of persistence” (Kraatz, personal communication) is achieved relatively unexplored. This bias of selective inattention to persistence is evident in many aspects of social life. For example, the concept of *stare decisis* in the United States legal system (among others) renders any ruling that upholds a previously established precedent mundane; however, any decision that breaks with precedent – such as the recent *Citizen United v Federal Election Committee* ruling on corporate campaign spending – captures the attention of headline writers, talking heads, and the politically astute. We are more aware of, attentive to, and compelled by change than by persistence, and this bias is evident in scholarly research as well.

This is especially true in institutional research. Because persistence is fundamental to most conceptions of institutions, institutional persistence initially seems phenomenologically uninteresting; however, that risks ignoring what are potentially highly interesting forms of action that enable that persistence. For example, in an automobile with perfect cruise control, its rate of speed is relatively uninteresting, say a constant of 60 miles per hour, and we may be more interested in other factors – steering, fuel efficiency, engine wear, all of which are very interesting – but examining those does not help us to understand the complex systems by which the cruise control maintains the constant speed of 60 miles per hour, especially if the car encounters steep grades. At least in cases where an institution encounters extreme and/or unexpected events, causing a focused and conscious questioning of the previously taken-for-granted nature of the institution, persistence represents the triumphant reassertion of those previous arrangements in the face of such challenges. In the cruise control analogy, a simple (e.g., taken-for-granted) setting on the rate of fuel delivery to the engine does not account for constant speed both up and down steep mountainous terrain.

Yet, there is considerable terrain with steep grades. Similarly, history provides many examples where institutional persistence was achieved in the face of such extreme or unexpected events. Examples include: the Chemical Industry’s *Responsible Care* program initiated after the *Bhopal* incident, the successful efforts to preserve the historic site of Fenway Park after plans were announced to move it, and

the various successful efforts to preserve the traditional definition of marriage in the wake of same-sex marriage advocacy across the United States. These examples suggest that the use of agency to promote the persistence of an institution is not rare and is present across a breadth of settings from social institutions, to organizational fields, to very specific and localized embodiments of an institution. Both in terms of overcoming a threat to the institutional arrangements and in terms of this phenomenological breadth, these enabling activities represent an exciting line of inquiry. Consequently, in this dissertation, I begin to look behind the “taken-for-granted” nature of institutional persistence by asking: What forms of action contribute to the persistence of institutions that face extreme or unexpected events which cause embedded actors to question theretofore taken-for-granted institutional arrangements?

Empirical Overview

This dissertation has evolved in many ways between its original inception and this physical manifestation. While the scholarly pursuit embodied in the dissertation gained clarity and focus during that evolution, the possibilities for empirical settings multiplied and diversified. However, by mid 2007, the needs – or desires – for clear management relevance and availability of data conspired with my personal passions to recommend a study of the institutional processes enveloping the securities markets during the Great Depression, whose antecedent crash shook the taken-for-granted nature of that institution. As I immersed myself in the historical context during the U.S. Presidential election of 2008, however, the data and analyses became anachronistically timely. As the “Great Recession” hit the U.S. Economy, many of the same fundamental questions regarding the relationship between the government and Wall Street resurfaced, and comparisons to the Great Depression, and even the Senate investigations in the 1930s, became commonplace. From my perspective, the question could easily be cast in terms of the appropriateness of preserving, or more accurately, continuing to preserve, certain aspects of the institutions and institutional practices central to the U.S. economy. As we have yet to really address or understand the potential impact on those institutions that will result from our current situation, my

dissertation is limited to assessing the actions taken in the early 1930s. I do, however, include an epilogue to the dissertation which links my analysis and findings to the more recent crisis.

The US Stock Market crash of 1929 and ensuing erosion of securities values in the first half of the 1930s brought the institution of the stock market into question as the public lost confidence in that aspect of the capital market structure, as evident in reduced participation as well as editorials and letters written from constituents to their government representatives. Yet, despite the magnitude of economic consequence and loss of public confidence, the structure of the capital market in the United States remains relatively persistent even today, particularly the operation of the stock market itself. The most notable outcome in the capital market was the creation of the Securities and Exchange Commission (SEC), which, as a separate organization, had relatively minor impact on the structure or operation of the stock market itself, serving rather as an external regulatory agency focused on ensuring that businesses attempting to access capital by issuing securities disclose appropriate information.

The enacted legislation was the product of considerable effort, deliberation, and action on behalf of a host of actors ranging from the President to Congress to Wall Street insiders and their agents. Their work shaped the form of regulation that emerged in 1934. In this dissertation, I analyze that work – as embodied in the speech events recorded in the public debate – in an effort to understand how the embedded actors’ work contributed to that result.

Methodological Overview

To investigate this phenomenon, I have completed an inductive study of the public debate between and among members of legislative and executive branches of government, their constituents, and Wall Street executives, focusing primarily on the activities of the Pecora Commission which spanned 1932 to 1934 and investigated the causes of the erratic stock market behavior from 1928 through 1933 and other financial market anomalies. Using an inductive, qualitative analysis of the relevant public debate, I focus on actors’ “speech events” – either oral or written – to uncover the positions they adopted

and advocated in the wake of the loss of institutional taken-for-grantedness. Grounded in the first-hand accounts of the principal actors, I identify the form of actions aimed at protecting the existing institutional arrangements (the persistent meanings, values, and patterns of interaction that defined the securities market) from the threat of change. By doing so, I shed light on an area of institutional theory that has been relatively silent, yet can inform strategies for organizations embedded in institutions under threat, offering alternatives to the perspectives uncovered by institutional entrepreneurship research. I also provide a brief history of relevant scholarly work based on the same empirical setting.

Dissertation Overview

This dissertation is organized as follows. In the next chapter, I present a summary of the relevant literature from institutional theory, detailing the progression of research over the last 25 years showing how path dependence (Scott, 2005) has linked the concepts of agency and change in institutional research. In chapter three, I present a stylized account of the empirical setting. My goal in the third chapter is to present an abridged history that provides the reader with sufficient context necessary to frame the interpretive analysis that follows.

Chapter four presents a detailed outline of my methodological approach, including a summary of the data sources and the analytical techniques employed. Chapter five presents the core analyses. The analysis recapitulates the method, grounding the emergent constructs and themes in the data. Chapter six builds on this analysis, showing how actors employed the emergent constructs in patterned interactions. These lead to the development of a generalized model of institutional guardianship and discussing implications for institutional and organizational theory, as well as limitations of the study in Chapter seven. Finally, in response to the many parallels being drawn between the current financial situation and the Great Depression, I close the main body of the dissertation with an epilogue focusing on the connections between the institutional actions taken in the Great Depression and offering interpretations and implications of this research relevant to what is now being labeled the Great Recession.

CHAPTER 2: THEORETICAL GROUNDING

*In my reading, most institutional scholars accord little attention to
the issue of institutional persistence...*
(Scott, 2008: 129)

Institutional Theory has shown great resilience over the past 75 years. In particular, the so-called “new institutionalism in organizational analysis” (DiMaggio & Powell, 1983; Meyer & Rowan, 1977) has been a fertile area of research for 30 years. Part of this resilience comes from its ability to adapt to early criticism (Hirsch, 1997; Stinchcombe, 1997), in particular addressing the two commonly expressed concerns that early work characterized the environment as static and actors in the field as lacking agency. Without abandoning phenomena that do meet those conditions, extensive work has also looked at how changing institutional environments affect primarily passive actors in the field (e.g., Dacin, Goldstein, & Scott, 2002; Fox-Wolfgramm, Boal, & Hunt, 1998; Hoffman, 1999) and how active agents, institutional entrepreneurs, establish new institutions arrangements (e.g., Greenwood & Suddaby, 2006; Reay, Golden-Biddle, & Germann, 2006; Zilber, 2006). This has implicitly linked the concepts of change and agency in most institutional research. I propose that this represents only one aspect of agency in institutional contexts and that not all agency in institutional environments needs to promote change. In particular, I propose that some embedded actors may believe change to the institutional arrangements is undesirable and, when perceiving potential change, may actively work to inhibit or prevent such change. I label such action *institutional guardianship*, defined as *intentionally and consciously engaging the institutional environment in an effort to preserve it in the face of perceived potential change*.

Supporting this perspective, the recent elaboration of *Institutional Work* (Lawrence & Suddaby, 2006) identifies three distinct objectives of institutional work: *creating*, *disrupting*, and *maintaining* institutions. However, in their review of the literature, Lawrence and Suddaby note a lack of work focused specifically on the maintenance of institutions, and call for researchers “to focus more attention on the ways in which institutions reproduce themselves” (Lawrence & Suddaby, 2006: 234). And, in fact,

recent research has shed light on how embedded actors preserve, at least in part, institutions (e.g., Creed, DeJordy, & Lok, 2010; Hirsch & Bermiss, 2009; Zilber, 2009).

Within this category of institutional maintenance, I am specifically interested in the use of agency to re-stabilize and preserve existing institutional arrangements that have come under threat. This is complementary to work in institutional entrepreneurship where agents leverage institutional uncertainty or contradiction to effect change (e.g., Greenwood & Suddaby, 2006) and most extant work in institutional maintenance that examines how stable institutions enact reproduction (e.g., Angus, 1993) or how institutional work simultaneously promotes change and reproduction (Creed et al., 2010; Zilber, 2009). Thus, while both guardianship and maintenance deal with the reproduction (or propagation) of institutions over time, guardianship occurs in the face of conscious challenge to the institutional order, whereas maintenance, as typically identified in the current literature, does not. In this dissertation, I address the idea of agency employed to promote persistence of institutional arrangements *under threat*. My research questions are: 1) What form does agency directed at preserving or stabilizing institutions in the face of potential change take? and 2) How do actors leverage existing institutional resources (e.g., cognitive/cultural assumptions, normative sentiments) to preserve valued aspects of that institution? And 3) What aspects of the institutions do actors target for preservation?

To help frame my contribution, I arrange this chapter as follows: First, I offer a definition for the key construct of agency, since I am particularly interested in the intentional efforts of actors to preserve the institution, rather than mindless reproduction. Second, I summarize the ongoing debate in institutional theory based around the action-structure dichotomy that facilitates the “either/or” approach to agency and persistence in institutional research. Third, I highlight the progress of empirical work in the neoinstitutional tradition, showing how it has incorporated concepts of change and agency over time, and how that evolution has implicitly linked agency to change in the literature. From there, I review

theoretical work relevant to the use of agency for persistence. Finally, I close with a review of relevant literature that has used the SEC as a research setting.

Defining Agency

There has been a proliferation of definitions for the term agency within the realm of institutional theory (e.g., Clemens & Cook, 1999; DiMaggio, 1988; Fligstein, 1997; Greenwood & Suddaby, 2006; Lawrence, 1999; Seo & Creed, 2002; Zilber, 2002). Rather than attempt to reconcile these, I draw on Emirbayer and Mische's (1998) thorough and systematic treatment of the construct in which they define human agency as "*the temporally constructed engagement by actors of different structural environments – the temporal-relational contexts of action – which, through interplay of habit, imagination, and judgment, both reproduces and transforms those structures in interactive response to the problems posed by changing historical situations*" (Emirbayer & Mische, 1998:970). Importantly, this definition allows for agency in the reproduction of structural environments, which is my focus, but also allows for other outcomes. In adopting their definition for institutional settings, I consider institutions a specific form of their generic "structural environments" and my boundary condition of institutions that have lost their taken-for-granted status a specific case of one of the "problems posed by changing historical situations" in this setting.

Adapting their definition, I use the term agency to mean an individual or collective actor's explicit engagement of the institutional environment which – through the interplay of habit, imagination, judgment, and other activities – enables reproduction and transformation of the institution in interactive response to the loss of the institution's taken-for-grantedness. Although my focus is on reproduction, agency is about engagement toward either reproduction or transformation, independent of its success in either. I have also added "and other activities" to their list of "habit, imagination, and judgment" to not preclude other forms of activity that may constitute agency. Given the nature of my empirical setting, the

activities I examined are captured in the record of the public debate, and are largely speech events that represent the “habit, imagination, and judgment” of the principle actors. Despite these minor modifications, this definition remains consistent with Emirbayer and Mische’s (1998) contention that agency can yield reproduction, but makes explicit that only reproduction which is engaged intentionally and consciously constitutes agency. Thus, I deliberately exclude reproduction in the form of unconscious, taken-for-granted actions (e.g., instinctively invoking a script) which passively propagate institutions through mechanisms of cognitive constraint (DiMaggio & Powell, 1991); agency, as defined here, requires deliberate reproduction, as in the conscious and explicit deference to tradition or attempts to re-establish a valued social order that has come under threat.

The Action-Structure Debate

A rare constant in scholarship under the umbrella of institutional theory is a certain ambiguity in the definition of an institution. Although writing over 70 years ago, Hughes’s observation – “The only idea common to all usages of the term institution is that of some sort of establishment or relative permanence of a distinctly social sort” (1936:180) – remains true today. While the literature is “replete with definitions of institutions” (Lawrence & Suddaby, 2006:216), most definitions crystallize into two camps reflecting the action-structure duality (Hirsch & Lounsbury, 1997), also characterized as the distinction between conceiving of institutions as constitutive and prescriptive or as constraining and proscriptive (Clemens & Cook, 1999). In one view, more prevalent in what is often termed “old institutionalism,” institutions are seen as enduring social structures whose persistence is the result of leaders infusing those structures with values (Selznick, 1957). In the new (or neo) institutional camp, institutions are persistent social structures that serve to constrain actors within the organizational fields they occupy (DiMaggio & Powell, 1991). While often positioned as antagonistic (e.g., Stinchcombe, 1997), both definitions are consistent with the perspective of institutions as persistent social arrangements (Hughes, 1939).

But, in many ways, the similarity ends there. In the earlier work, most notably advanced by Selznick (1957), institutions result from the process of infusing social structures with values, imbuing them with the power to outlast the requirements which originally gave rise to them. This relationship between institutions, value, and power is further developed by Stinchcombe who details the mechanisms by which power and values are correlated and jointly propagated in his definition of an institutions as “a structure in which powerful people are committed to some value or interest” (1968:107). With explicit recognition of power, and its use in infusing or propagating values, research aligned with this perspective adopts a more process-oriented focus on action (i.e., the process by which values are infused into, and become aligned with, institutional arrangements) supporting a constitutive/prescriptive perspective of institutions (the values constitute the institution and prescribe what are appropriate behaviors and structures). In this perspective, agency is critical to the process of institutionalization, but the objective of this agency is explicitly infusing value, persistence is a byproduct. Within the typology of institutional work, this process aligns most readily with institutional creation, which Lawrence and Suddaby explain involves “re-making the connections between sets of practices and the moral and cultural foundations of those practice” (2006:224). This differs from what they term institutional maintenance because the connections between practice and values are explicitly “reformulated.” Implicit in their discussion is the assumption that re-making these connections means doing so in a manner different from previous connections, that is, in service of a new institution. Yet, re-making these connections might entail re-establishing existing connections (re-making in the most basic sense). The implicit assumption underlying their definition is both the result, and an additional example, of the implicit link between agency and change in institutional research.

On the other hand, the release of *The New Institutionalism in Organizational Analysis* (DiMaggio & Powell, 1991) highlights work more consistent with the structure-oriented constraining/proscriptive perspective of institutions. Work consistent with this perspective focuses on the taken-for-granted nature

of existing institutional arrangements that limits the options available for organizations in the field, stimulating isomorphic adoption of myth, ceremony, and organizational form and practice (DiMaggio & Powell, 1983; Meyer & Rowan, 1977). Later, in an important piece which strives to bring together these divergent, but not incompatible, perspectives, Scott (2001) conceptualizes the institutional environment as comprising three distinct yet vital ingredients, which he terms pillars, focused around regulatory, normative, and cultural-cognitive aspects of the social context. He presents these as mutually constitutive elements of the institutional structure, consistent with the architectural metaphor, and defines institutions as “multifaceted, durable social structures made up of symbolic elements, social activities, and material resources” (Scott, 2001:49). I adopt this definition here because a) it is well-established in the institutional literature, b) it concisely captures the cultural, cognitive, regulatory, and normative facets of institutions, and c) it captures the conceptual, physical, and behavioral dimensions of institutional arrangements.

Despite his explicit recognition of three pillars and a multifaceted nature, some institutional scholars argue that, like earlier work which focused more on mimetic isomorphic forces than the normative or coercive ones (Mizruchi & Fein, 1999), the cultural-cognitive pillar dominates the institutional research landscape; researchers have lost sight of the important normative characteristics of institutions and institutional environments (e.g., Kraatz, 2009). Independent of the focus, this perspective generally characterizes institutions as persistent social structures which are taken-for-granted and which therefore pre-consciously constrain the actions taken and meanings ascribed by actors embedded in the field. The focus is on persistence and constraint; agency, when addressed at all, is framed as a mechanism for overcoming that constraint.

Inherent in the action-structure debate is the issue of figure and ground (Goodwin, 1996) and the implicit choice to highlight as interesting for study either the structure or the action (i.e., the persistence or the agency). This promotes a Levi-Straussian dichotomy, and facilitates an “either-or” approach in

institutional research, which typically chooses one **OR** the other. However, in this dissertation, I reject the dichotomy and explicitly explore the question of persistence **AND** agency. To set the stage, I next review how change and agency have become linked in most institutional research.

Change and Agency in Institutional Research

In recent writing, Scott (2005) discusses how institutional research has evolved, identifying a move “toward more interactive models” that account for and explore the interactions between actors and the field. Challenging the definitional view that “taken-for-granted scripts, rules, and classifications are the stuff of which institutions are made” (DiMaggio & Powell, 1991:15), critiques of early neo-institutional theory (e.g., Hirsch, 1997; Stinchcombe, 1997) decried the perspective’s characterizations of the environment as static and of the actors as passive. In response, institutional theorists began their move to “more interactive models,” which embraced the concept of change and accounted for active agents involved in a more dynamic conception of institutions.

Bringing in Change. Change was incorporated into the neo-institutional perspective more readily. Working within the cultural-cognitive, proscriptive perspective of institutions, research in institutional change suggests that the same forces that promote isomorphism and passive adoption of stable legitimated structures (e.g., Deephouse, 1996) also serve to translate field level (institutional) change down into the organizations in that field (e.g., Hoffman, 1999). The resulting stream of research into institutional change (Dacin et al., 2002) embraces dynamic models, but change is theorized almost exclusively as a “top-down” process. Organizations are still passive, limited in their behaviors to adapting (or not) to changes in the environment (e.g., Fox-Wolfgramm et al., 1998). Change is the product of exogenous “shocks” (Fligstein, 1991) or “disruptive events” (Hoffman, 1999) and institutions are still proscriptive, constraining the actors embedded in them.

Adding Agency. While exogenous jolts or shocks are also potential antecedents to deinstitutionalization (Davis, Diekmann, & Tinsley, 1994; Oliver, 1992), which is conceptually the most

radical form of institutional change, they are also potential catalysts for agency (Clemens & Cook, 1999; Fligstein, 1997). Such shocks can also be seen as opportunities to leverage institutional instability or contradictions (Friedland & Alford, 1991; Seo & Creed, 2002) to manipulate the institutional environment, in efforts to make it better serve one's interests (DiMaggio, 1988).

With the exception of some early theoretical treatments that I will discuss later (DiMaggio, 1988; Fligstein, 1997; Oliver, 1991), the concept of agency remained elusive for most institutional researchers, at least empirically. Yet, as DiMaggio points out "this neglect is implicit not in the logic of institutional arguments, but in the rhetoric that institutional theorist have used to advance them" (1988:10). Eventually, the marrying of agency with the neo-institutional perspective emerged under the rubric of institutional entrepreneurship. In this stream of research, select institutional actors (institutional entrepreneurs) work to change the institutional environment or create new institutions that are aligned with their own interests (e.g., Greenwood & Suddaby, 2006).

This line of work has paid specific attention to the role of position and to rhetoric, discourse, and the construction of meaning as antecedent conditions and mechanisms of institutional entrepreneurship. The role of position traces its roots to DiMaggio's (1988) seminal work, in which he suggests that elite actors in central positions are best suited to manipulate the environment. This perspective is elaborated in subsequent theoretical (Fligstein, 1997; Oliver, 1991) and empirical (Greenwood & Suddaby, 2006) work. However, another stream of research suggests that entrepreneurship is more likely on the periphery, where institutional forces are less strong, affording actors more freedom and the exposure to other institutional domains necessary to innovate (Kraatz & Moore, 2002; Leblebici, Salancik, Copay, & King, 1991; Seo & Creed, 2002). Under the right conditions, contradictions most evident at the periphery can be leveraged to effect institutional change across the field. Examples include when actors on the periphery become more central (Kraatz & Moore, 2002), when marginalized actors claim powerful

institutional roles (Creed et al., 2010), or when a field encounters destabilizing forces (Leblebici et al., 1991).

While research on structural position deals with the antecedents of institutional entrepreneurship, the role of discourse, rhetoric, and meaning in institutional entrepreneurship focuses on mechanisms and tactics employed by agents in building legitimacy and acquiring resources (Lounsbury & Glynn, 2001; Martens, Jennings, & Jennings, 2007). Here, Phillips, Lawrence, and Hardy (2004) offer a thorough theoretical analysis of the relationship between discourse and the process of institutionalization more generally. They offer a discursive model that relates discourse and text to institutions, and suggest that institutional entrepreneurs are “authors – generators of influential texts that are aimed at influencing the nature and structure of discourses and, in turn, affecting the institutions that are supported by those discourses” (2004:648). These authors – the institutional entrepreneurs – may be embedded, peripheral, or even exogenous to the institution, but the texts they produce must somehow influence the discourses upon which the institution is built.

Rhetoric, discourse, and meaning have been central to much empirical work in institutional entrepreneurship. For example, in one of the earliest empirical pieces which explicitly recognizes institutional entrepreneurship, Rao (1998) analyzes the interplay between isomorphic forces and actively appropriating cultural meanings to construct frames that present certain consumer watchdog organizations as a new but legitimate and necessary organizational form. Additional empirical work can be found in Zilber’s (2002) work on rape crisis centers in Israel, where she shows how agency in that institutional context takes the form of new interpretations carried by a new category of actors who infused new meanings and values, and in Suddaby and Greenwood’s (2005) work on the rhetorical strategies employed by the (then) Big Five accounting firms in championing multidisciplinary partnerships as a new organizational form in public accounting.

Limitations of current approach. Taken together, this research has examined both antecedent conditions and mechanisms of institutional entrepreneurship. But, since the institutional research that considers agency is limited to institutional entrepreneurship – which likely will help inform research on agency employed for stability instead of change – there may be conditions and mechanisms specific to agency employed for institutional persistence that are not present or apparent in research focused on institutional entrepreneurship. Further, while Suddaby and Greenwood (2005) actually examine the rhetorical strategies of both the proponents and opponents to the institutional change embedded in the adoption of the new organization form, their work is an exception.

Because institutional entrepreneurship research links agency to change, researchers typically adopt the perspective of entrepreneurs, privileging their subjective interests in explaining how they must overcome “resistance to change.” This bias, paralleling the same phenomenon in the organization change literature (Dent & Goldberg, 1999), has important implications for the study of agency in institutions. First, we tend to only study agency in institutions where entrepreneurship has been successful, leaving unexamined those situations where others’ agency may have stopped it. Second, when agency is implicitly linked to change and progress, resistance to such change is reduced to a manifestation of inertia which, although enacted by individuals, is presented as unreflective or unconscious adherence to the past and construed as the antithesis of agency (e.g., Garud, Jain, & Kumaraswamy, 2002). Consequently, within the growing body of empirical research on institutional entrepreneurship there is very little explicit attention to the agency of those whose interests and values are served by the current institutional arrangements (See Suddaby & Greenwood, 2005 for a notable exception). In this dissertation, I explicitly decouple agency and change, and consequently investigate agency employed to promote persistence as a proactive effort to *fight for the status quo* rather than as resistance to change.

Conceptualizing Agency for Institutional Persistence

Using the dimensions of change and agency as axes, Figure 2.1 depicts a 2x2 grid that shows how neo-institutional theory has addressed early critiques. Neoinstitutional theory concerned with the passive adoption of legitimated structures, both strategic (e.g., Deephouse, 1996) and symbolic (Glynn & Abzug, 2002), is characteristic of the upper left quadrant where neither agency nor change were prevalent, and embedded actors conform to institutionalized structures and practices. The upper right quadrant constitutes research into institutional change that recognizes institutions as dynamic contexts to which passive actors are forced to respond (e.g., Hoffman, 1999). It was amidst a research focus on institutional change that agency was more fully incorporated in empirical institutional research, resulting in a prosperous stream of research under the rubric of institutional entrepreneurship in the lower right quadrant, where institutions are dynamically constructed and manipulated by active agents within the field (e.g., Greenwood & Suddaby, 2006). The final quadrant, on the lower left, represents research into how active agents enable persistence in institutional arrangements. This quadrant, which I label *Institutional Propagation* to distinguish it from institutional conformity by alluding to the agency afforded the embedded actors, has received little focused attention from neo-institutional researchers; it is this gap that I explore in this dissertation, looking specifically at propagation in the face of potential change, which I term *Institutional Guardianship*.

Figure 2.1: Four Possible Patterns for Change & Agency in Institutions

Institutional Environments Conceived as:

| | | STATIC | DYNAMIC |
|--|---------|---|--|
| <i>Treatment of Agency in Institutional Environments</i> | ABSENT | <p style="text-align: center;"><u>Institutional Conformity</u></p> <p>Institutions are stable Actors adopt structures passively</p> <p>(e.g., Deephouse 1996; Glynn & Abzug, 2002; Singh, Tucker, & House, 1986)</p> | <p style="text-align: center;"><u>Institutional Change</u></p> <p>Institutions are dynamic Actors passively adapt to changes</p> <p>(e.g., Hoffman, 1999; Dacin, Goldstein, & Scott, 2002)</p> |
| | PRESENT | <p style="text-align: center;"><u>Institutional Propagation</u></p> <p>Institutions are persistent Actors preserve institutions</p> <p>(institutional maintenance, preservation, & guardianship)</p> | <p style="text-align: center;"><u>Institutional Entrepreneurship</u></p> <p>Institutions are malleable Actors shape or create institutions</p> <p>(e.g., Zilber, 2002; Greenwood & Suddaby, 2006)</p> |

Importantly, the recently advanced framework of *institutional work* (Lawrence & Suddaby, 2006) focuses almost entirely on the bottom row of this figure. The quadrant labeled *institutional entrepreneurship* comprises most activities involved in the creation and disruption of institutions, since they both invoke agency and change, while the quadrant labeled *institutional propagation* best aligns with the general concept of institutional maintenance. While some studies have taken up institutional maintenance (Trank & Washington, 2009) or related constructs such as preservation (Hirsch & Bermiss,

2009), I focus specifically on the re-establishment of an institutional order that has come under threat, which has received little focused scholarly attention in work examining institutional maintenance.

A notable exception is Maguire and Hardy's (2009) recent discussion of *defensive institutional work*. Their research focuses on the deinstitutionalization of a field, not on institutional maintenance per se, examining the rhetorical and discursive approaches actors used in framing arguments against the continued use of DDT. However, they also identified actors working to preserve the use of DDT and contrasted their rhetorical strategies with those attempting to ban it. Although their primary focus is on the deinstitutionalization of the field, they do provide specific analyses of the discursive work undertaken to preserve it. In this sense, they mirror the work of Suddaby and Greenwood (2005) by examining the rhetorical strategies both in support of and opposition to a form of institutional change, when viewing deinstitutionalization an extreme case of institutional change. While understanding work on institutional preservation is not the primary objective of either research project, their acknowledgement of defensive forms of rhetorical and discursive institutional work provides a foundation upon which to further explore the phenomenon of agency used in support of persistence.

However, there are implications to the identification of work in support of persistence within a study designed to examine institutional change. Clearly, for example, the defensive work did not succeed. More importantly, though, the normative tone is in support of the change – in support of banning DDT. This potentially serious issue is more clearly identified in the work of Misangyi, Weaver, and Elms (2008) who propose an institutional view on ending corruption. While their main focus is on ending corruption in social systems where it has become institutionalized, they also address the fact that some benefiting from that corruption will attempt to stop it. Not surprisingly, given the normative nature of the subject, they address those supporting the “status quo” of corruption and actors who must be dealt with, go so far as to raise research questions of “How [to] strip resources from those who would defend the status quo?” (Misangyi et al., 2008:766). But that implicitly asserts we would want to do so. While

they provide step-by-step analysis of what “defenders of the status quo” (those benefiting from corruption) might do in response to institutional change aimed at preventing it, when they also apply their framework to explain how corruption can become institutionalized in the first place, those actors fighting for the status quo are absent. Defending the status quo is only conceived of in the context of a normatively sanctioned change – not in the face of undersirable change.

Thus, the limited work identifying defensive institutional work within the context of institutional change notwithstanding, this phenomenon has received comparatively little scholarly attention as the focus of study. Although research on institutional entrepreneurship addresses both major critiques of early institutional work by incorporating both change and agency, it only does so together. When considering the critiques separately, change has been addressed both in the presence and absence of agency, but agency has only been addressed under conditions of change. Consequently, and perhaps as a result of what Scott (2005) has termed the path dependence of institutional theory, “the work required to maintain institutions remains a relatively unstudied phenomenon” (Lawrence & Suddaby, 2006:234), at least empirically. There has, however, been more theoretical development in this area.

Although DiMaggio (1988) discusses the propagation of institutions, which he terms reproduction, in which institutions exhibit persistence over time, in his theoretical work on interest and agency in institutions, the discussion of agency is primarily focused on effecting change, providing the basis for much of the work in institutional entrepreneurship. Chronologically, the next influential and systematic treatment of agency in institutional environments is Oliver’s (1991) work on strategic responses to institutional pressures where she theorizes that actors subjected to institutional pressures may respond with varying degrees of agency. She proposes that strategically manipulating the institutional environment requires the highest degree of agency, followed, in order of decreasing agency, by defying, avoiding, compromising with, and acquiescing to it. For each of these strategies, she also identifies three tactics that actors may employ in executing the strategy. For example, manipulation can take the form of

co-optation, through importing powerful constituents; influence, by shaping values and criteria (See also Lawrence, 1999 for more on establishing criteria as a form of institutional strategy); or control, which is achieved by dominating institutional constituents and processes (and is therefore generally only practical for actors already in powerful institutional roles).

Interestingly, however, Oliver (1991) does not employ DiMaggio's (1988) term of institutional entrepreneur in her work, even when she discusses explicit manipulation of institutional values, processes, or constituents, preferring to label the actions themselves as tactics and strategies instead. This is consistent with the perspective I adopt for this dissertation that not all agency employed in institutional environments is inherently entrepreneurial in nature. This possibility is explored more explicitly, albeit still briefly, in Fligstein's (1997) theorizing about social skills and action in institutions. Building explicitly on DiMaggio's (1988) discussion of institutional entrepreneurs but rejecting a solely structural perspective, he suggests that institutional entrepreneurs are social actors who have the social skills necessary to affect institutional arrangements in order to achieve their desired outcomes. He suggests these skills allow them to adopt or understand the perspectives of others, and subsequently promote the interests of others (or at least appear to) in their attempts to influence institutional arrangements (Fligstein, 1997).

Like Oliver (1991), Fligstein (1997) suggests there are a limited number of tactics available to strategic actors and lists fifteen ranging from the exercise of direct authority to, effectively, bluffing. He also elaborates, briefly, on the mechanisms and utility of each mechanism. For example, discussing the tactic of framing action, he writes "Strategic actors have to convince others who do not necessarily share interests that what will occur is in their interests. ... Because interests and preferences can be reformed as fields form, it is only necessary to link broader frames to groups' existing conceptions of interest" (Fligstein, 1997:399). This suggests effective use of this tactic can also be a form of co-optation in which

the values the institution was intended to embody are co-opted by a savvy institutional entrepreneur with the right social skills (Selznick, 1948).

Both Oliver (1991) and Fligstein (1997) also theorize about the conditions under which each strategy and tactic is most appropriate. Yet, in that discussion, they seldom consider an established institutional environment that has come under threat. Oliver (1991) discusses the multiplicity of constituents and environmental uncertainty, both of which tend to increase the degree of agency expected, but does not specifically address the potential enabled by pending or perceived institutional challenges or crises. On the other hand, Fligstein explicitly limits the scope of certain tactics with caveats like “as long as there is no crisis” and eventually suggests “in crisis, incumbent groups will simply try to reinforce their power. ... This, however, usually does not occur because incumbents are used to having their way and because their entire power base is built on a certain set of principles” (1997:399).

While earlier explicit discussions of reproducing institutions were relatively formative (DiMaggio, 1988; Fligstein, 1997), Lawrence and Suddaby (2006) offer a detailed and systematic treatment of the topic. They offer a typology of six forms of institutional work directed at maintaining institutions: *Enabling work* like the creation of institutional infrastructure such as credentialing agents, *Policing* through surveillance and enforcing compliance, *Deterring* by creating formalized barriers to institutional change, *Valourizing (& demonizing)* by idealizing examples that make the link to institutionalized values explicit, *Mythologizing* through fabrication and dissemination of parables, and *Embedding and routinizing* by infusing values into the structures and processes that participants encounter as part of their normal routine. They illustrate these by drawing on a wide body of existing institutional research to support their work. This is a significant advance in theorizing about the role of agency in institutional persistence.

However, since maintenance is distinct from creation and disruption, which has largely been the focus of institutional entrepreneurship researchers – and therefore of research into agency in institutions –

the institutional environments in the works Lawrence and Suddaby draw on in supporting these forms of institutional maintenance are typically stable rather than contested. In this sense, their work on institutional maintenance draws from the same unquestioned or “taken-for-granted” nature of institutions that underlies virtually all neo-institutional research except work under the rubric of institutional entrepreneurship which links change to agency. In fact, they point out that in culling out examples, “the descriptions we found of maintaining institutions were often located as often in the sections providing background and context for an empirical study as in the ‘results’ section” (Lawrence & Suddaby, 2006:230). This further demonstrates that while this type of institutional work has been acknowledged as part of the institutional context, it has seldom been the focus of study. As distinguished from this taken-for-granted aspect of the institutional context, I am particularly interested in agency employed in preserving and protecting the established institutional arrangements when they are explicitly subject to a destabilizing force strong enough to threaten the existing institutional arrangements.

However, research has begun to identify actors employing agency to support institutional persistence in the context of other studies. As mentioned above, Suddaby and Greenwood’s (2005) investigation into legitimating accounts explored accounts on both sides of a contested institutional change, and Maguire and Hardy (2009) found that some actors actively attempted to defend the use of DDT in the wake of deinstitutionalization efforts. Further, a recent edited volume entitled *Institutional Work* includes chapters focused on institutional maintenance. For example, Zilber (2009) explores the role of narrative in institutional maintenance, and Trank and Washington (2009) explore how the AACSB works to maintain accreditation as an institution despite the rise of other forms of cultural capital and legitimacy available to schools. It is to this nascent stream of literature that my work contributes; however, I focus directly on the actions undertaken by those who work to preserve established institutional arrangements. I am interested in understanding what aspects of the institution they work to

preserve and how they do so. In other words, I am interested in the objects of institutional guardianship, the forms it takes, and the resources used.

Further, although not all efforts at institutional change may trigger guardianship activities, history is replete with stories of guardianship ranging from the 19th century Luddites vandalizing automated looms in textile factories to proponents of Proposition 8 in California (which restored the traditional, institutionalized heterosexual definition of marriage in the face of a state Supreme Court ruling that challenged it) in the 2008 U.S. election. And while these two examples focus on very different institutions, they share in having successfully triggered considerable and overt guardianship activities. Taken together, these examples suggest a deeply vested interest in maintaining the current institutional arrangements which, paradoxically, may not affect the individual personally. The vast majority of proponents of Proposition 8 were not involved in same-sex relationships; however, the guardians perceived the potential change as undermining a core, and likely valued, aspect of their institutional context – preventing legitimization of a subjectively and morally sanctioned view of abhorrent behavior. This suggests that it is not a threat to personal self-interest that triggers guardianship, rather a threat to some underlying value manifest in the institution. Cast in this light, the Luddites arguably rallied not (only) against the financial implications of automation, but against the dehumanization and loss of personal dignity they felt accompanied automation.

In other research, Maguire and Hardy (2009) found that, amidst the efforts to ban the use of DDT in the wake of Rachel Carson's *Silent Spring*, some actors actively defended the continued use of the compound. The effort with which established actors in the field (e.g., the National Agricultural Chemicals Association, Monsanto) defended the use of DDT was equally intense, but more directly tied to individual interests, in this case economic interests instead of perceived morality or personal dignity. Considered together, this suggests that the common trigger for guardianship is a *perceived threat* to any of a range of *underlying values* (e.g., social, moral, economic) embedded in the current institutional

arrangements. Changes to institutional arrangements that evolve subtly or over long periods of time may fail to be perceived or noticed by would-be guardians, and changes to institutional arrangements that do not appear to threaten any (or enough) actors' perceived underlying values may fail to motivate them to take action.

Finally, it is interesting to note that, while there is a scarcity of research here by neo-institutionalists, the bottom left quadrant is perhaps the most consistent with older institutional perspectives, especially in the work of Selznick (1957) and Zucker (1977). In their work, the active infusion or support of a belief or value by a powerful agent, i.e., an institutional leader (Selznick, 1957), contributes to its persistence beyond the requirements of formal rationality through institutionalization "in which the moral becomes factual" (Zucker, 1977:726). Although work in this area generally focuses on leadership in the establishment of new institutional arrangements (Glynn & Navis, Forthcoming), applying this theoretical lens to the context of ongoing institutional persistence may provide a common ground upon which to reconcile these two perspectives (Hirsch & Lounsbury, 1997) and begins to address Kraatz's (2009) call for a return to a more Selznickian, value-oriented approach in institutional research.

In conclusion, while institutional theorists have successfully incorporated both the concepts of change and of agency into their research agenda, the latter is implicitly linked with the former; agency is almost exclusively positioned as a mechanism for effecting change. In this dissertation, I decouple agency from change to understand how institutional actors employ agency to consciously fight for the status quo when it is threatened. This is an important distinction which helps prevent a potential normative bias that all change is progress, and identifies strategies and tactics uniquely appropriate or particularly well-suited for agents attempting to preserve the values already embedded in institutional arrangements that have come into question. Given the variety of settings in which institutional guardianship is present (e.g., industry self-regulation, markets, marriage) and as a natural complement to institutional entrepreneurship research, this represents an important aspect of institutional life and an

opportunity for fruitful research. Before moving on to provide a stylized history of my research context, the creation of the Securities and Exchange Commission in 1934, I close this chapter with a review of other institutional research employing that context.

The SEC as a Research Context in Institutional Theory

I selected the creation of the Securities and Exchange Commission as my empirical setting for several reasons, but most explicitly because it offered a complex and nuanced context in which to examine potential guardianship behaviors. Since I expect guardianship to be triggered by *perceived threat to one or more underlying values*, the Senate investigation into the operation of the stock market met those criteria. First, it was highly public and visible, even being mentioned in President Roosevelt's first inaugural address. Second, there were many opportunities for various actors to perceive threat – reports of Congressional activity alluded to varying degrees of regulation, banks were closing, and the market itself had suffered an enormous loss of fiscal valuation. Further, given the seriousness of the crisis, the resulting legislative action, while significant, left many, even most aspects of daily stock market operations effectively unchanged, suggesting that at least some actors may have worked consciously to preserve certain aspects of the institution in the face of that crisis. By examining the actions of multiple actors, I hoped to contrast the work of those striving to preserve the institutional arrangements with those striving to change them. Thus, unlike most research involving the SEC, it is not the actions of the SEC or the subsequent impact of those actions on the market on which I focus, but rather the actions leading up to the creation of the SEC itself.

Given the regulatory nature of the SEC and its impact on corporate governance, it has received considerable attention from organizational scholars. Frequently, it is acknowledged for its regulatory role, or in work relating to corporate governance or compliance, such as recent work relating to the Sarbanes Oxley Act both in terms of management control systems (e.g., Braganza & Desouza, 2006) and on the impact on organizational behavior (e.g., Schwarzkopf & Miller, 2005). In addition, there is

another group of articles that focus on the policies (economic, financial, monetary) which preceded the crash of 1929 and collapse of 1933 (e.g., Meltzer, 2001), analyzing them to determine if or how the crisis might have been avoided, as well as others that focus on the implications for accounting as a profession that result from the establishment of the SEC (e.g., Healy, 1938).

However, since I am interested in an institutional account of the creation of the SEC, most of that work is not relevant to this study. A search for articles that employ an organizational institutionalism framing of the SEC yielded only 49 articles, although there were others which use the term “institutional” as adopted in other fields (e.g., economic institutionalism, political institutions, etc.) In most of the 49, the SEC is an actor influencing the organizational field (e.g., Mezas & Scarselletta, 1994; Suddaby & Greenwood, 2005; Thornton, Jones, & Kury, 2005), and conceptualized as either an exogenous (e.g., Fligstein, 2001) or endogenous (Mezas & Scarselletta, 1994) force. This is consistent with the SEC’s regulatory purview.

My focus, however, is more specifically on the institutional processes that led to the creation of the SEC, rather than the institutional forces it has exerted as an established actor in (or around) the field. Therefore, I reviewed those 49 articles for references to the creation of the SEC and found only one article (Bealing, Dirsmith, & Fogarty, 1996) with that focus. This article, however, focuses not on how the SEC came into existence, but rather on how it engages in seemingly ceremonial action to gain legitimacy and appease the various constituents it serves immediately after it is created. It does present a history of the creation of the SEC, but as background (as I do with the Market Crash of 1929 in the next Chapter), rather than as the focus of research. The actual analysis is of actions of the SEC itself. While I perform the same type of analysis, I am interested in the actions that resulted in the formation of the organization, not in how it operated in its earliest years. The difference is evident using the analogy of “the birth of the SEC”, in which their study examines neonatal behaviors while I focus on gestation, labor, and delivery.

More recently, Rubstova, DeJordy, Glynn, and Zald (2010) have examined the evolution of institutional logics in the stock market field and how these have affected the implementation of financial regulation. They find that government bodies enacting regulation are embedded in, and subject to, the same institutional logics which dominate the field. Their internalization of these logics shapes the regulation they enact in response to crisis events. Their analysis concludes with the enactment of the Securities Exchange Act of 1934, which creates the SEC. The focus of that research is on how government regulation reflects and subsequently shapes dominant institutional logics in the stock market field. The research reported upon here delves into the mechanisms by which actors promote the stability of institutions that have come under threat. While there is overlap, their work focuses on institutional factors that explain the content of regulation, while this work examines the micro-process by which it is formed and enacted. Based on this review, I believe this dissertation may be the first systematic institutional analysis of the micro-processes behind the creation of the SEC.

In this chapter, I have framed my dissertation in terms of the relevant research both from the perspective of institutional theory, recounting the treatment of change and agency in various streams of research, and from the perspective of my empirical setting, the creation of the Securities and Exchange Commission. In the next chapter, I present a stylized history of the events leading to the creation of the SEC to provide context for my empirical analysis before outlining my methods in Chapter 4.

CHAPTER 3: A STYLIZED HISTORY OF THE STOCK MARKET BEFORE 1934

The fundamental business of the country, that is the production and distribution of commodities, is on a sound and prosperous basis.

(President Herbert Hoover, October 25, 1929)

Perhaps the most enduring and most visible product of the stock market crash that started in 1929 is the creation of the Securities and Exchange Commission (SEC). The body was vested with the power to enforce the provisions of the Securities Act of 1933 (the so-called “Truth In Securities Act which requires disclosure of material financial information for new securities issues on the primary market) and the Securities and Exchange Act of 1934 (which, in addition to creating the SEC, compels periodic disclosure of similar information for all securities exchanged on the secondary market). As explained by Rubstov and colleagues (2010), the market crises leading into the Great Depression were the latest in a series of market crises; however, unlike its predecessors, the crash begun in 1929 was both of greater magnitude, reducing the monetary value of traded securities by 90% over six months, and more enduring, affecting financial sector activities well into 1933. It was in the context of the Great Depression that Franklin Roosevelt campaigned on his New Deal platform with a particular focus on securities reform. His landslide victory – carrying 42 of 48 states representing 89% of the Electoral College and an 18% point advantage in the popular vote – suggests an environment conducive to radical reform. And, in fact, many of the New Deal programs implemented during his administration resulted in profound and lasting changes to the country and its culture (e.g., Social Security).

It is easy to imagine then, that the SEC’s origins might recall Athena’s emergence from the forehead of Zeus, fully formed, armed, and ready for battle vested with broad and sweeping responsibilities and powers to stave off a reoccurrence of any such crisis, akin to the creation of the Homeland Security department in the wake of 9/11. The crash had decimated the national economy and heralded in the Great Depression which permeated every aspect of social life in the early and mid 1930s. Instead, the SEC was born as a “toothless watchdog” whose mandate was not radical reform of the capital market’s structure or processes, but narrowly focused primarily on the simple assurance of proper

disclosure of material financial information for companies whose securities were publically traded. Why, then, on one hand did the Social Security Act of 1935 effect lasting and sweeping social change while the Securities and Exchange of 1934 was limited primarily to issues of disclosure. Comparatively, this represents an incremental, evolutionary approach, at most. As Phillips and Zecher (1981:1) write:

It would therefore be misleading to attach too much significance to a single episode such as the founding of the Securities and Exchange Commission (SEC) in the depths of the Great Depression. While the event brought the full power of the federal government to the enforcement of the rules and regulations that already governed the issuance and trading of securities and contracts between managers and owners of corporations, those rules and regulations had been developing for about 150 years and may not have evolved in any significantly different way if the SEC had been founded 100 years earlier (or later, for that matter). The market forces leading to the development of the earlier rules, and to the founding of exchanges and other organizations to enforce them, still may operate through the mechanisms of the SEC.

I propose this narrow scope of enforcing “the rules and regulations that already governed” the market, can be better understood if we look at the actions undertaken by the actors involved in defining the form of the resultant legislation. In particular, the President, who campaigned in part on a platform of significant securities reform; Congress, tasked with implementing such legislation; and the Wall Street insiders, who occupied central and privileged positions in the current institutional arrangements, all influenced the regulatory response that became embodied in the Securities and Exchange Commission.

A full recounting of the conditions leading to the creation of the SEC in the exact form it took would date back to the seventeenth century (Bealing et al., 1996). In this chapter, I present a highly stylized recounting of the conditions that led up to the two year period of 1933 and 1934 in which the Pecora Commission was established by the Senate to investigate “all ramifications of bad banking” (Seligman, 1982), starting with relevant federal and state legislation from the 1850s forward. I focus particularly on the five years leading into Franklin Roosevelt’s first administration and the financial market crises from 1929 to 1933.

Unlike the data for 1933 and 1934, which are primary data comprising verbatim transcriptions of hearing testimony, debates on the floors of Congress, as well as speeches and other formal

communications from the President and other key players, I compiled this history from a variety of secondary sources (Bealing et al., 1996; Karmel, 1982; Koslow, 1990; Meltzer, 2001; Pecora, 1939; Phillips & Zecher, 1981; Pointer & Schroeder, 1986; Seligman, 1982). Detailed lists of the actors and events described in this summary are presented in Appendices A and B, respectively. The summary is arranged primarily chronologically, focusing on events relevant to the stock market itself (e.g., the expansion in the 1920s, particular practices, and subsequent crash), and the role of government in business (e.g., precedent for federal regulation of business, previous government requirements of disclosure).

The Boom Before The Crash

In the aftermath of World War I, the 1920s were characterized by period of surplus and abundance, often labeled “the roaring 20s”. This period was marked by dramatically increased productivity, with the United States Gross Domestic Product (GDP) soaring almost 50% in the nine years before the stock market crash of 1929. It was also a period of then-unparalleled technological advance which led to embracing modernity. The automobile, radio, chemical, and motion picture industries advanced considerably, while technological change, aided by mass production, resulted in urbanization, changing lifestyles, and a societal break with tradition.

Much of the boom is credited to the Republican administrations’ laissez-faire and pro-business economic policies. These policies were characterized by protective tariffs that privileged American businesses, major corporate tax reductions, and a general principle of getting the government out of business. This philosophy was exceptionally typified by President Calvin Coolidge who took over upon Harding’s death in 1923 and served until 1929, by Herbert Hoover who served as Secretary of Commerce under both Harding and Coolidge before assuming the Presidency in 1929, and by Andrew Mellon, who served as Secretary of the Treasury for Harding, Coolidge, and Hoover.

However, in October 1929 the Stock Market crashed and would continue to do so until four months into Franklin Roosevelt's administration. The country entered the Great Depression, and the social liberalism of the 1920s reversed course. Although the three Republican Administrations had adopted a laissez-faire economic policy, and President Hoover explicitly asserted a lack of constitutional authority for federal regulation of securities, just since the turn of the century the Sherman Anti-Trust Act, the Pujo Committee's investigations into a Wall Street cabal, the 16th Amendment to the U.S. Constitution, the Clayton Anti-Trust Act, and the Federal Reserve Act all provided precedence for the federal government's role in economic and corporate affairs. During World War I, several government agencies formed committees to liaise with business interests to ensure resources were appropriately focused on the war effort, and many of them enacted or recommended requirements for disclosure of material financial information.

Simultaneously, in the expanding economy, more people had money to invest and looked to the capital market and stock exchanges for high returns; in the 12 years ending in 1922, participation in the stock market more than doubled from 7 million to over 14 million people. At the time, although the New York Stock Exchange (NYSE) was already the premier exchange, there were many other exchanges operating. Any legal action involving stock markets at the time was undertaken at the state level. Although many states passed so-called "Blue Sky" laws to attempt to curb the offering and sale of frivolous stocks (e.g., for ventures that "promised the blue sky"), since many of these contained provisions for licensure of agents or interfered with interstate commerce, they were subsequently ruled unconstitutional in federal courts, making them ineffectual. Even amidst publicity of extreme malfeasance by investment bankers, during the presidential campaign of 1932 in the depths of the depression, Hoover reasserted a lack of federal jurisdiction and the responsibility of states in regulating the exchanges, providing a platform upon which he proclaimed Roosevelt's culpability in the devastating collapses of the New York Stock Exchange as Governor of New York.

Prior to the crash, several bills were introduced in Congress to regulate securities through disclosure requirements, including a bill sponsored by Rep. Andrew Volstead and another sponsored by Rep. Edward Taylor, both in 1919, as well as a 1922 bill from Rep. Edward Denison, and several actions from Sen. Carter Glass spanning 1927 and 1928. These bills were all defeated, primarily based on lobbying from the business community grounded on their assessment that the cost of disclosure far exceeded the benefit. Considering the economic boom, the arguments of the business community held considerable weight.

However, by the time the last of those measures were introduced, indicators were available to suggest the market boom no longer reflected actual economic growth. While the stock market advances generally tracked the gains in GDP over most of the decade, in the six months leading up to the 1928 presidential election, stock prices on the NYSE doubled, far outpacing the growth in GDP. During this time, Hoover successfully campaigned based on extending “Coolidge Prosperity” and the continuation of the Laissez-Faire economic policies.

In February of 1929, the Federal Reserve Board cautioned members against borrowing money to loan for speculative activity in the stock market, and on March 6th, President Hoover urged the Federal Reserve Board to curtail lending for speculation. Although the Federal Reserve held an unprecedented Saturday meeting, they took no action; however, these events did curb speculative fever and prices drop. On March 26th, however, National City Bank Chairman Charles E. Mitchell explicitly defied the Board’s warning and announced they would borrow money for the express purpose of backing speculative loans. Neither the Hoover administration nor the Federal Reserve Board interceded. This sparked a resurgence of speculation, with brokers’ loans reaching a rate of \$400 Million each month. Senator Carter Glass criticized the Federal Reserve Board for not denying the National City Bank loans.

In October, the market crashed. In the eight weeks between Labor Day and the end of October, the NYSE lost \$18 Billion, representing 36% of its value. During this time, President Hoover issued a

statement saying “the fundamental business of the country, that is, production and distribution of commodities, is on a sound and prosperous basis;” however, in November, he started assembling industrial leaders to elicit voluntary programs to maintain employment and wage levels. Secretary of the Treasury Andrew Mellon, on the other hand, continued to promote the laissez-faire economic policy stating that the slump will liquidate itself and “purge the rottenness out of the system....People will work harder, live a more moral life. Values will be adjusted and enterprising people will pick up the wreck from less competent people.”

That winter Congress introduced six more bills to regulate the capital market through disclosure, margin loans, and/or restriction of short sales (selling stocks one does not presently own, with the expectation the liability can be covered by subsequent purchases of the same stock at a lower price). However, during this time, “the Little Bull Market” partially rebounded, and regained half the losses incurred in the fall by April. This rebound, combined with President Hoover’s assertion that “we have passed the worst and with continued effort we shall rapidly recover,” created what we retrospectively know to be a false sense of confidence.

Two months later, after President Hoover signed the Smoot-Hawley Tariff Act in June of 1930, the market began another decline. Hoover then attempted to work directly with NYSE President Richard Whitney to promote self-regulation of the exchange, a strategy he pursued with a singular focus for the rest of his administration. Initially Mr. Whitney used a radio address to assert the necessity of certain practices that had come under attack, in particular short-selling. Although the administration still resisted federal regulation, Democrats gained control of the House of Representatives and 49% of the Senate in the midterm elections of 1930. Subsequently, and spurred by Mr. Whitney’s radio address, they introduced no fewer than ten bills particularly aimed at regulating or eliminating short-sales within days of convening. The confrontation between Congress and Wall Street was set in motion and by October

1931, although the Republicans retained control, Majority Leader James E. Watson warned President Hoover that a Senate investigation was inevitable.

Hoover leveraged Congress's adversarial stance to bolster his pleas for self-regulation of the exchanges. Although the NYSE eventually implemented some policies to track or reduce speculative trading, a Senate investigation was authorized in March and began in April. During these hearings, when testifying about the efficacy of the self-regulation tactics adopted by the NYSE, Mr. Whitney conceded he did not believe even the most stringent of these would hinder the activities (e.g., short-selling) they purported to. Despite such admissions, the exchanges and investment banks easily outmaneuvered the Senate's attorneys, which precipitated several changes in counsel. In the fall, Democrats gained not only the White House but control of both houses of Congress and the new chair of the Senate Committee on Banking and Currency retained Ferdinand Pecora as chief counsel for the Senate investigation.

Pecora, known particularly for his aggressive cross-examination style, conducted his first hearing in early February, publicly exposing significant malfeasance on the part of both the Insull public utility and National City Bank. However, the monetary crisis was in full swing and by the end of February eight states declared Bank Holidays. On March 3rd the Federal Reserve Board temporarily suspended the gold standard. The next day, amidst bank holidays in 35 states, during his inaugural address, President Franklin Roosevelt stated: *"Practices of the unscrupulous money changers stand indicted in the court of public opinion, rejected by the hearts and minds of men... The money changers have fled from the high seats in the temple of our civilization. We may now restore the temple to the ancient truths. The measure of the restoration lies in the extent to which we apply social values more noble than mere monetary profit"* [Franklin Roosevelt, Inaugural Address, March 4, 1933].

This was the context in which the SEC was created as a complement to the existing institutional arrangement of the established capital market. Fifteen months into Roosevelt's first administration, both

the Securities Act of 1933 and the Securities Exchange Act of 1934 were passed by Congress and signed into law, and the SEC was created and staffed.

Given the highly political and visible context, and the serious implications for the national economy and public welfare, the potential is high for the use of agency to promote not only innovation and change, but also persistence and stability, at the federal level. As Rubstov and colleagues show (2010), the nature and scope of federal regulation had increased since the inception of the capital market but it generally lagged behind and mimicked state legislation. The Pujo Committee gave federal clout to concerns from the New York state legislature, and set the stage for the 16th Amendment to the U.S. Constitution, the Federal Reserve Act of 1913, and the Clayton Anti-Trust Act of 1914. Federal entanglement with the market economy had gained acceptance, which, combined with the widely-publicized establishment of the Pecora Commission, heralded the potential for significant, yet-to-be-defined federal involvement in the institution of the stock market. In the next chapter, I present an overview of my methodology and the data used in my analyses, before my presenting my findings.

CHAPTER 4: METHODS

The purpose of grounded theory is not to make truth statements about reality, but, rather to elicit fresh understandings about patterned relationships between social actors and how these relationships and interactions actively construct reality.

(Suddaby, 2006:636)

Given the exploratory nature of my research questions, I adopted inductive, qualitative methods to investigate the phenomenon of Institutional Guardianship in an archival setting. In particular, I followed the general guidelines outlined by Strauss and Corbin (1998) and Miles and Huberman (1994), with particular focus on grounded theory and the latter's domain of archival research.

This approach is consistent with Lee's (1999) discussion of Miles and Huberman's (1994) considerations for qualitative research. Specifically, my empirical setting holds intrinsic interest, namely the highly elaborated and contested debate over federal securities regulation; requires thick descriptions to convey the richness of the setting; and, most importantly, requires the *publically enacted and lived meanings* of the actors involved. Since I am particularly focusing on understanding the microprocesses enabling the preservation of institutions, which embody persistent social arrangements and meaning systems, it was essential to engage the qualitative experiences of actors captured in the archival accounts of this process. The final consideration, requiring longitudinal effort, is less relevant for an archival analysis, but it is still necessary to place the analysis in a temporal context and to examine the evolution of the process across the temporal period captured in the archival data. Such analysis is consistent with the methods commonly employed in evaluating the interaction between actors and institutional forces (e.g., Suddaby & Greenwood, 2005; Zilber, 2002).

The remainder of this chapter is arranged as follows. First, I present an overview of my data sources, identifying both the primary data sources which captured the contemporary accounts (which I term speech events, although they include both transcripts of spoken words, such as testimony at a hearing, as well as written correspondence, such as letters or prepared statements) of actors immersed in this setting, as well as an overview of the secondary data sources which helped inform the context in

which the primary data were generated. I then discuss how I sampled texts from the voluminous corpus of primary data for more detailed analyses, and close with a discussion of my analytic technique.

Primary Data

The principal data analyzed in this dissertation comprise the legislative history of the Securities and Exchange Act of 1934, supplemented by a few other relevant items (e.g., President Roosevelt's first inaugural address). This Act embodies the product of considerable work and effort from a varied constituency. Although authored by Congress, it is most directly linked to the extensive investigative hearings of the Pecora Commission, which heard testimony from no less than 70 Wall Street executives, and written statements and communications from as many more. Taken together, the legislative history represents a range of actors embedded in the institution, from Wall Street insiders to average citizens who lost their life savings and wrote to their Congressman, and had the potential to represent as many distinct perspectives in support of, or opposition to, significant securities reform.

As such, the legislative history comprehensively captures the public debate, from all parties involved: proposals, counter-proposals, rationale, and proposed as well as enacted legislation, and provides the best insight into the thought processes and evolution of what eventually became the Securities and Exchange Act of 1934. For an initial list of items, I drew on the work of J.S. Ellenberger and Ellen P. Mahar (1973), who compiled the legislative history of the Securities regulation in 1933 and 1934, assembled into 11 bound volumes. Together, these acts established the Securities and Exchange Commission and infused it with specific regulatory functions within the capital market. These data comprise volumes of verbatim testimony at investigative hearings, debate on the floors of both houses of Congress, as well as minutes and official reports of the various committees related to these actions, as well as the text of the actual Acts themselves. Importantly, also included in these data are other items, such as letters from President Roosevelt, the president of the NYSE, as well as news items and letters from constituents read into the Congressional Record verbatim. I supplemented those data with

additional items that my research identified as relevant. Although I drew on both acts to establish the context of my dissertation, my analysis focused on the Securities Exchange Act of 1934, which established the Securities and Exchange Commission (SEC). A complete list of the documents which comprise the primary data is provided in Appendix C.

All together, the primary data comprise 4,642 pages of data, primarily in single-spaced, two-column format. Converting these data to electronic form generally doubled or tripled the page count, when single spaced with one-inch margins in Microsoft Word.

Secondary Data

While I only analyzed the primary data, I inform the context in which those activities took place with secondary data. It is from these data, for instance, that I constructed the narrative presented in Chapter 3. These data are not part of the analyses per se, but rather serve to help understand the social milieu in which the key players were acting. These data fall principally into three categories: third person contemporary accounts, such as newspaper articles or editorials reporting on the state of the institution itself (i.e., the stock market) or the activities of the key players working the issue; third person retrospective accounts, such as academic histories of the stock market or creation of the SEC including Joel Seligman's *The Transformation of Wall Street* and Susan Phillips and Richard Zecher's *The SEC and the Public Interest*, or historical legal analysis of related laws, such as Louis Loss and Edward M. Cowett's book *Blue Sky Law*; and finally first person retrospective accounts of the events, such as Ferdinand Pecora's book recounting the Senate's hearings on stock market practices, *Wall Street Under Oath*.

While these do not serve as data to be analyzed, they do help inform the analyses by providing insights into the social environment and, in the lattermost case, the thought processes underlying the actions being analyzed. These secondary sources serve to situate the actions in their temporal and social contexts, allowing for a "thicker" description, "richer" interpretation, and a better understanding of the

context in which the accounts which comprise the primary data were created. In this sense, I “identify influential factors in the broader social structural context: the history, politics, economics, and/or culture ... in which the case occurs” (Vaughn, 1992:179) and adhere to the considerations for archival qualitative research outlined by Miles and Huberman (1994).

Sampling

Combined, the primary data comprise seven volumes and nearly 5,000 pages. While the nuanced evolution of the exact wording of the Acts eventually passed by Congress may be of interest to legal and regulatory scholars, in this dissertation I focus on advancing our understanding of the mechanisms of Institutional Guardianship. As such, within the research context, I sampled individual activities that meet Vaughn’s (1992) three criteria for theoretical sampling: 1) they are potential examples of institutional guardianship, 2) the activities vary in size and complexity, and 3) they vary in function, representing actors with a variety of interests (e.g., politicians from both parties, investors, investment bankers, and the exchange itself).

While all of the data comprising the legislative history are potentially relevant to the setting of this dissertation, some documents meet these three criteria better than others. For example, the hearings, floor debates, statements, and reports are most likely to provide insight into the motivations and rationalizations of key players, especially as they respond to each other in a dialectic process or provide explicit rationalizing accounts for their actions and proposals. These types of activities provide the best potential insight into the process of institutional guardianship. For that reason, I focused on the statements associated with the initiations of certain actions (e.g., the President’s statements to Congress, statements made with the introduction of bills) and sections of the hearings and floor debates which focus on responses to proposed legislative action and which explicated the thought processes of the spectrum of actors involved.

Within those categories, I chose items representing cases of activities that varied in scope and complexity (e.g., broad and focused initiatives), and that represented actors from a variety of interests (e.g., Congress, the Administration, the Stock Exchange, Investment Bankers). Despite including a wider variety of actors in my sampling, commonalities emerged around three categories of actors who effectively acted uniformly: The President, Congress, and Wall Street. I also selected documents from various times during the deliberations about the regulation of securities exchanges. Thus, consistent with grounded theory, my sampling was theoretical, rather than random, to ensure the individual activities analyzed collectively address these selection criteria and consistent with the directive that: “When building theory inductively, the concern is **with representativeness of the concepts and how concepts vary dimensionally**. We look for instances in which a concept might be present or absent and ask why. Why is it there? Why is it not there? What form does it take?” (Strauss & Corbin, 1998:214 emphasis in original). Since my focus is on the objects and mechanisms of Institutional Guardianship, I looked for potential variance in those, both their presence and their form. For example, going into the study, I expected the President to be promoting change, not persistence, and Wall Street actors to have the opposite stance, and ensured that both parties were represented in my theoretical sampling.

Sampling and analysis of texts evolved in an iterative process, going back and forth between the data, emergent codes, and the literature, as well as the mandates of grounded theory (e.g., constant comparison), until no material insights were found from the analysis of new documents, indicating theoretical saturation (Glaser & Strauss, 1967). In the end, although I read at least some portion of every item listed in Appendix C, I performed detailed coding on all or part of approximately half of them.

Analytic Technique

Although inductive in nature, qualitative analysis consistent with grounded theory can be informed by theory (Strauss & Corbin, 1998). As such, coding is explicitly a generative, iterative, and emergent process. To facilitate coding, I scanned relevant documents from the legislative history and,

when practicable, converted them to full text using optical character recognition software. These documents were then loaded into Atlas.TI for coding. Atlas.TI provides flexible coding capabilities, supporting both the use of a predetermined codebook and the establishment of new, emergent codes consistent with my approach. Codes emerged through iterative coding conducted in several phases. Initially, I coded based on constructs salient to the phenomenon as captured in the archival reports. In this phase, many unique and different codes were introduced, grounded in the data and were often *in vivo* codes (i.e., a code was created using the exact words appearing in the data). At this point, armed with my research question, coding was prolific and highlighted any speech events that suggested preservation or persistence.

After coding a small subset of items from each actor, I looked within and between documents and across codes, to begin identifying emergent constructs. At this point, similar codes were combined (for example, there were a bunch of codes like “fair prices” and “fair practices” and “fair access,” which were combined into a single code of “fairness”). Based on this set of codes, I returned to another iteration of coding, also drawing on theory to help understand how these emergent constructs may be relevant to the larger institutional context. For example, the concept of “fairness” resonated with Weber’s (1948) concept of “substantive rationality,” which informs the institutional perspective advanced in this work (DeJordy & Almond, 2008).

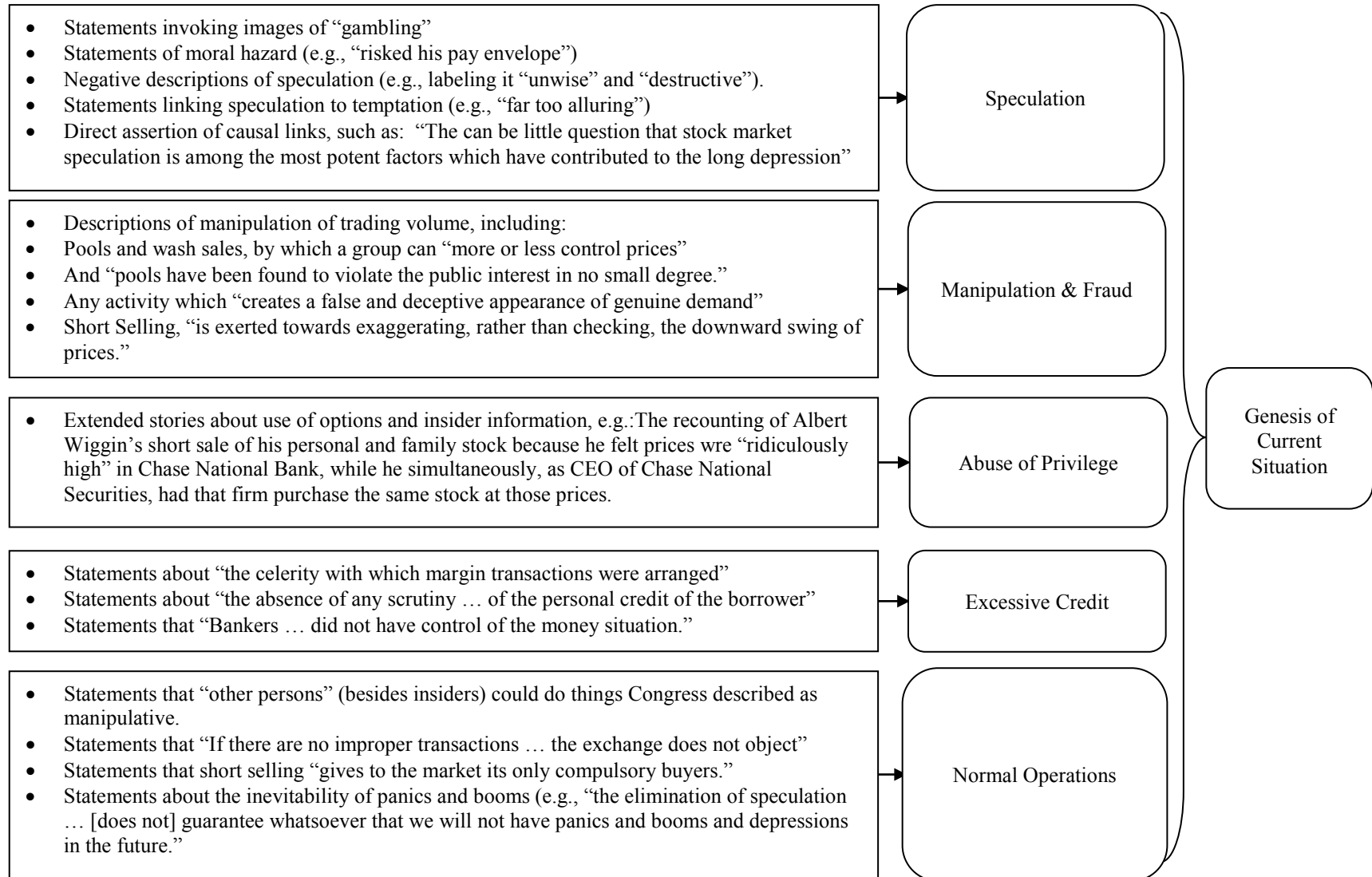
In this next stage of coding, additional first order constructs were identified, but I also performed axial coding to link together constructs that captured important themes from the data (Strauss & Corbin, 1998). In this section, I was able to identify theoretically relevant second order constructs, or themes, with which multiple first order codes were associated. A high level codebook, arranged by major theme and providing descriptions of first order constructs, is presented in Table 4.1. Following other qualitative researchers (e.g., Corley & Gioia, 2004; Pratt, Rockmann, & Kaufmann, 2006), I also provide a more detailed graphic representation of the coding process, tracing examples of data through multiple phases of

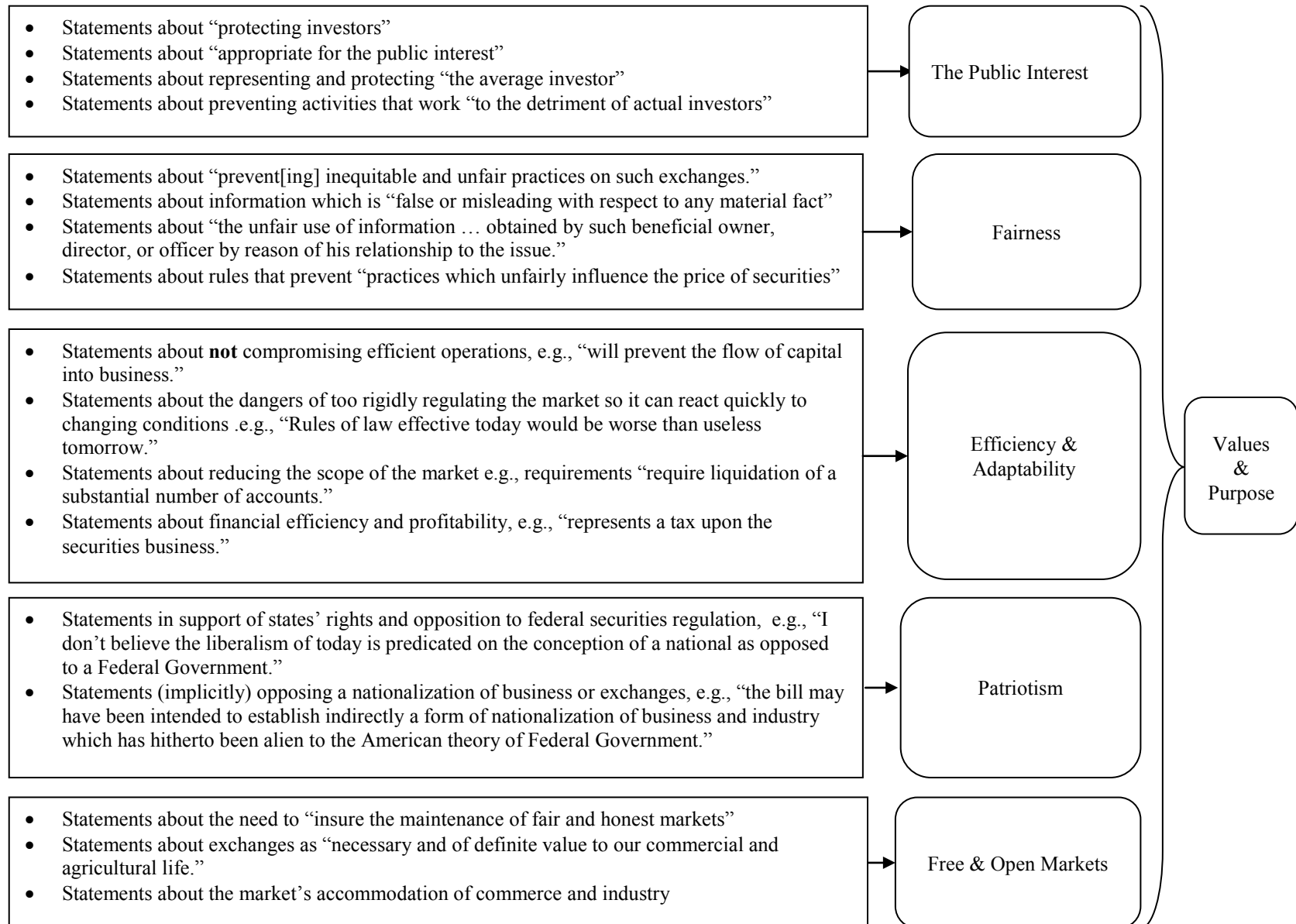
coding to represent the iterative coding process that grounds the analysis in the data and leverages existing theory, allowing new insights to emerge from the data. This graphic representation, Figure 4.1, follows the code book.

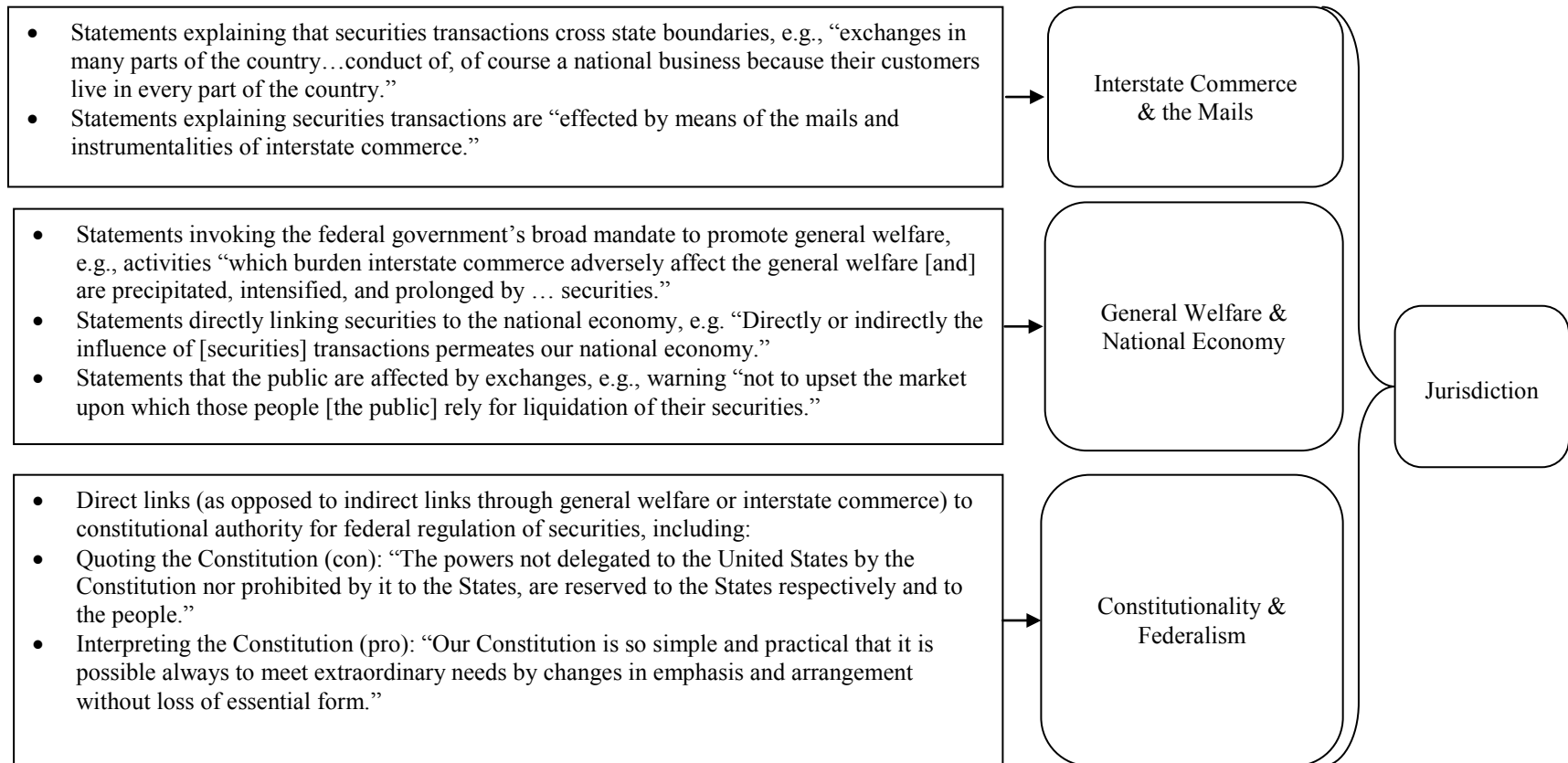
Table 4.1: Final Codebook Arranged by Theme

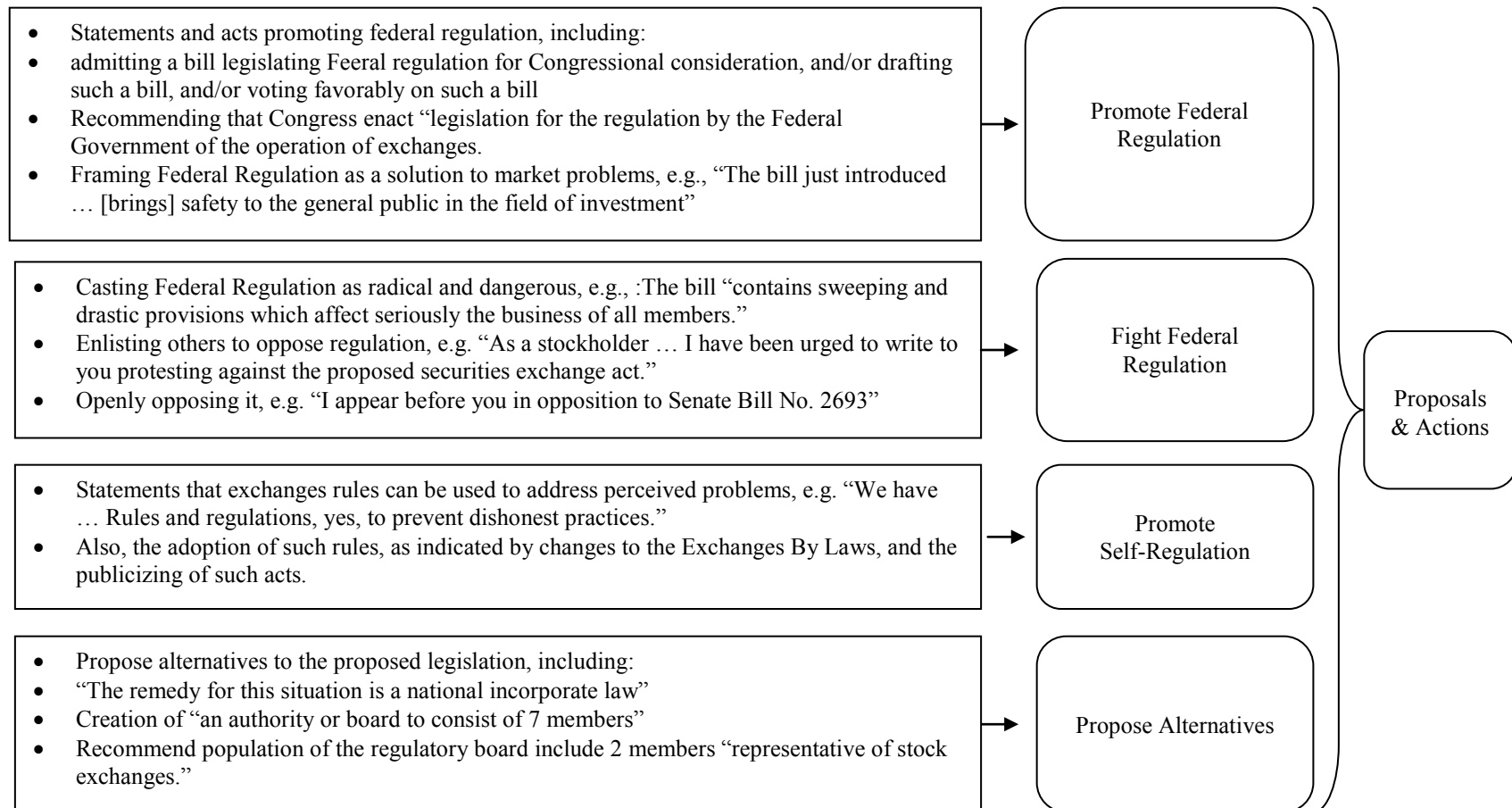
| | | |
|---|--|---|
| Theme: Genesis of Current Market Conditions | | |
| | Code: Speculation | Use for references to speculation, excessive speculation, dangerous speculation, or inappropriate risk |
| | Code: Manipulation and Fraud | Use for activities designed to influence or manipulate the prices of shares or apparent volume of transactions, rather than to actually execute sales that result in a change of ownership. Also use for the knowing dissemination of incorrect or misleading information. |
| | Code: Abuse of Privilege | Use for activities which take advantage of structurally privileged positions (e.g., company executives use of options to fund pools with no risk) or the products thereof (e.g., use of insider information) |
| | Code: Excessive Credit | Use for comments referring to “easy money”, “low margin requirement”, “lack of rigorous credit checks”, or “easy lending” as fostering or creating speculation. |
| | Code: Normal Operations | Use for assertions that recent market behaviors are a normal part of the market economy and cannot be avoided. |
| Theme: Values & Purpose | | |
| | Code: The Public Interest | Use for associating the market with the general public welfare, the well-being of the national economy, or for protecting citizens from inappropriate behavior. |
| | Code: Fairness | Use for assertions that the market should provide fair access to all citizens, should be transparent, or otherwise not systemically preclude or favor any individuals or groups. |
| | Code: Efficiency & Adaptability | Use for statements that the market should operate efficiently to provide quotations and prices for securities, valuations for companies, and adapt appropriately to changing contexts. |
| | Code: Patriotism | Use for statements asserting the primacy of states’ rights over federal government, and for reduction or elimination of federal involvement in exchanges or securities regulation. |
| | Code: Free & Open Market | Use for statements espousing the values and benefits of a free and open market. |
| Theme: Jurisdiction | | |
| | Code: Interstate Commerce & Use of the Mails | Use for assertions that securities exchanges engage in interstate commerce or depend upon the mails, indirectly subjecting them to Congressional jurisdiction. Do NOT use for direct arguments about constitutionality; instead use Constitutionality & Federalism below. |
| | Code: General Welfare & National Economy | Use for direct or indirect assertions that securities and exchanges affect the general welfare through economic conditions (hardship and/or windfall), and affect the flow of capital, and industry, within the national economy. |
| | Code: Constitutionality & Federalism | Use for direct references to the constitutionality, or lack thereof, of federal regulation of securities and exchanges. |
| Theme: Proposals and Actions | | |
| | Code: Promote Federal Regulation | Use for actions or statements that assert the need for, appropriateness of, or otherwise promote, federal regulation of securities exchange. |
| | Code: Fight Federal Regulation | Use for actions or statements that discredit, reject, or otherwise undermine the need for or appropriateness of federal regulation of securities exchange. |
| | Code: Promote Self-Regulation | Use for actions or statements that enact, assert the sufficiency or appropriateness of, or otherwise promote self-regulation of the exchanges. |
| | Code: Propose Alternatives | Use for proposals that offer alternatives in lieu of proposed legislation not captured in the other three items in this theme. |

Figure 4.1: Graphic Representation of the Coding Process Grounded in the Data









Although I have presented these phases as sequential, the mandates of constant comparison and theoretical sampling associated with grounded theory (Glaser & Strauss, 1967; Strauss & Corbin, 1998; Suddaby, 2006) require that this process be iterative and flexible, yielding a far less discreet progression than is suggested by the description above. In the next two chapters, I present the findings from my analysis. First, in chapter five, I identify the emergent constructs and themes, grounding them in the data. Then, in chapter six, I present the actor-specific analysis of the patterned interactions of those constructs across their efforts to respond to the institutional context.

CHAPTER 5: ANALYSIS AND EMERGENT CONSTRUCTS

Legislative history, it appears, almost always has something for everybody.

(Justice Anton Scalia, April 21, 2010, *German v. Carlisle et al.*)

To address my research questions, I conducted qualitative analysis of primary source documents from the public and highly contested deliberations that resulted in the creation of the Securities and Exchange Commission. My analysis revealed that various actors employed intricate patterns of speech events which, taken together, shaped the development of regulation manifest in the Securities Exchange Act of 1934 and the Securities and Exchange Commission. In this chapter, I present the findings from those analyses, arranged according to the major themes which emerged out of the analysis described in the previous chapter. In order to “minimize the violence” to the data in presenting my analysis (Pratt, 2008:499), I ground each construct in examples from the data, identifying the various first order constructs which comprise each of the four major themes: *genesis of current situation, values and purpose, jurisdictions, and proposed actions*. I show how these themes relate to the construct of institutional guardianship by capturing the guardians’ answers to *why* the institution is in the condition it is in (genesis of current situation), *what* they perceive the institution represents (values and purpose), *who* should address the crisis (jurisdiction), and *how* they should do so (proposed actions). Thus, this chapter focuses on the data analysis yielding the identification of emergent constructs and recapitulates the emergence of those constructs; discussion of the connections between the various constructs, as well as actors’ patterned use of the constructs, are deferred to the next chapter.

Genesis of Current Situation

One of the first constructs to emerge from my analyses dealt with the various actors’ portrayal of the problems underlying the crisis which predicated these discussions and eventual regulatory action. During an earlier round of coding, I had created a category of *Statement of Problems* which subsumed many of the first order constructs now contained in this construct; however, in comparing across actors, it was difficult to find sufficient evidence from the Wall Street category to support that category, since they

generally made no statements indicating the existence of a problem, at least not with the stock market itself. The very absence of problem statements from Wall Street actors, however, was useful data and led to broadening the category to *Genesis of Current Situation*, which allows for attributions of the genesis of the current situation without casting it necessarily as a problem. This category comprises five first order constructs: *speculation, manipulation and fraud, abuse of privilege, excessive credit, and normal operations*, which I address individually below.

Speculation. The most widely promoted attribution for the genesis of the current situation across all the data and all the actors was that speculation, often prefaced with ‘excessive,’ it was commonly asserted as causal of the current market condition. Interestingly, however, the term speculation was used ambiguously, interpreted differently by different actors. There were even explicit, but inconclusive, discussions of the meaning of the term during Senate testimony.

Perhaps the most direct attribution of causality to excessive speculation comes from the President in a message to Congress, he states that he supports regulation “*for the elimination of unnecessary, unwise, and destructive speculation*” [LH;4;5;2264]¹. While his wording implies a qualification on certain types of speculation that are counterproductive, earlier in the same message he makes the distinction clear, stating “*that outside the field of legitimate investment, naked speculation has been made far too alluring and far too easy*” [LH;4;5;2264]. In this sense, the President appears to bifurcate stock-related activity between investment, which is legitimate and beneficial, and speculation, which is not. He maintains this singular focus on speculation through the enactment of the Securities Exchange Act of 1934. However, it is important that his definition of speculation subsumes activities that others may not, as evidenced below:

¹ Most of the quoted data comes from the Legislative History of the Securities Exchange Act compiled by J.S. Ellenberger and Ellen P. Mahar in 1973. Since this reproduces data from many sources, the history is arranged by items and divided into volumes. The citation LH;4;5;2264 means this data excerpt can be found in Volume 4, Item 5; and page 2264 within that item, as all items have their own page numbering.

Such speculation has run the scales from the individual who has risked his pay envelope or his meager savings on a margin transaction involving stocks with whose true value he was wholly unfamiliar, to the pool of individuals or corporations with large resources, often not their own, which sought by manipulation to raise or depress market quotations far out of line with reason, all of this resulting in loss to the average investor, who is of necessity personally uninformed. [LH;4;5;2264]

While bundling many activities under the heading of speculation in this passage, he touches on other activities which others distill into distinct categories. His allusion to risking a pay envelope resonates with other speech in which he invokes the word gambling. Coupled with the previous quote where such gambling is made “far too alluring,” his use of language suggests temptation toward the inappropriate, perhaps even immoral, activity of speculation, which he consistently ties directly to the market crisis. For example, in another letter specifically to Senator Duncan Fletcher (Chair of the Senate Committee overseeing the investigation), the President goes further, stating:

The people of this country are, in overwhelming majority, fully aware that unregulated speculation in securities and in commodities was one of the most important contributing factors in the artificial and unwarranted “boom” which had so much to do with the terrible conditions of the years following 1929. [LH;5;17;2]

Echoing the President’s perspective, Congress also posited causality between speculation and the market conditions which precipitated the hearings and debates they were engaged in. For example, in early discussions in Congress, Senator Fletcher states “*There can be little question that stock-market speculation is among the most potent of the factors which have contributed to the long depression.*” [LH;5;17;3] And, the official report offered as a result of the Senate Committee on Banking and Currency, states:

In retrospect, the fact emerges with increasing clarity that the excessive and unrestrained speculation which dominated the securities markets in recent years, has disrupted the flow of credit, dislocated industry and trade, impeded the flow of interstate commerce, and brought in its train social consequences inimical to the public welfare. [LH;5;21;5]

Wall Street actors, on the other hand, readily acknowledge that speculation takes place, but do not assert it played any role in bringing about the current market conditions. They use the term frequently in their statements and in responses to questioning, but they make no causal attribution between speculation

and the market conditions. In fact, they do not even acknowledge that current market conditions constitute a crisis; rather they assert the situation is the result of normal market operations, as discussed below.

Manipulation and Fraud. Above, the President alludes to several contributing factors to the speculative activity, including the individual investor's comparative lack of information and the operation of pools. Although the President generally subsumes these under speculation in his attributions of the genesis of the current situation, Congress parcels out several specific items which each contributed to the current market crisis, distinguishing them not as speculation, but as forms of manipulation and fraud, though they use those terms interchangeably. Yet, despite more clear assertions of multiple activities leading to the current crisis, they also blur the lines between various forms of causality. For example, in response to receiving a copy of a letter the New York Stock Exchange sends to members and corporate officials across the country soliciting public action against regulation, Senator Fletcher makes a statement as Chair of the Senate Committee on Banking and Currency which sponsored the Pecora Commission, stating:

Only last summer – in 1933 – after the country had started on the road to recover, the facilities of the New York Stock Exchange were used by a group of selfish men in such a way as to give them very large profits. Their method of doing business through the medium of pools, manipulations, options, put calls, and market rigging, left the public holding the bag as usual when the market collapsed in July 1933.

It collapsed because it was run by these men as a gambling and manipulative market for insiders against outsiders. [LH;4;7;3058]

For example, they specifically delineate the effects of pools (where investors would work together to buy and sell shares in order to affect prices) and wash sales (in which actors working in concert would increase trading volume figures without any net ownership change), which both created a false sense of trading activity as forms of *manipulation or fraud*, as evident in this exchange during one hearing:

Mr. Pecora: But is it possible under the operation so the exchange for a group to so operate in the market as to more or less control prices for the time being?

Mr. Whitney: If their stock and if their money holds out: yes. [SEPH;6;224]²

And the subsequent elaboration in the Committee Report:

The testimony before the Senate subcommittee again and again demonstrated that the activity fomented by a pool creates a false and deceptive appearance of genuine demand for the security on the part of the purchasing public and attracts persons relying on this misleading appearance to make purchase. [LH;5;21;32]

However, manipulation of the volume of shares traded or prices was only one mechanism by which Congress asserted unsuspecting investors were misled. They also identified the practice of brokerage houses and other vested interests disseminating favorable information about stocks through various channels (e.g., radio programs, newsletters, “flash” reports) as both manipulative and fraudulent.

While many attributions of manipulation and fraud were uncontested, some were. One highly contested practice linked by Congress to issues of manipulation and fraud was the practice of short sales – the selling of a stock one does not own with the intent of covering the sale later by purchasing the stock in the future at a lower price. This became one of the most hotly debated, and from the perspective of Wall Street actors, defended, areas of stock market practice. Arguments from Wall Street actors suggested that short sales were vital in stabilizing stock market prices, as those who had to cover their short sales would surely buy as the prices began to fall, thus preventing more precipitous falls. However, Congress rejects these theories of how short selling impacts the market, and advances their own theory in their report:

The theory assumes that short sellers cover when prices are declining sharply. The contrary has frequently been proven. During the summer of 1929, at the height of the great bull market, the short interest was relatively small. But after the break it increased; and as the decline gained in severity the short interest continued to expand. As a general rule, only when it appears that the bottom is in sight does short covering come into the market in volume. Thus, the cumulative influence of short selling is exerted toward exaggerating, rather than checking, the downward swing of prices. [LH;5;21;54]

² Part of this testimony was quoted in the legislative history, but not included in it. I therefore went to the verbatim transcript of the Stock Exchange Practices Hearings (SEPH) to understand the context of the statements included in the legislative history. This quote is found on page 2224 of Part 6, which is available for download from <http://www.archive.org/details/stockexchangepra06unit>. I shall use the form SEPH;6;2224 to cite data found in the verbatim transcripts of the hearing not fully included in the legislative history to provide a fuller context of the discussion.

Abuse of Privilege. A third area of focus in Congress's attempts to uncover the origins of the current condition is on the abuse of power and privilege. Related to, but more specific than manipulation, from this perspective, the current conditions, at least in part, can be traced to people in powerful positions (e.g., CEOs of corporations or those holding options) exploiting the power of their positions for personal gain, and to the detriment of the market as a whole. Examples of practices highlighted in this section include the use of options to fund pool operations and the use of insider information to trade on personal accounts. One example of this is evident in Congress's recounting of the various activities of Albert H. Wiggin, President of Chase National Bank, and several other corporations he controlled, including Metpotan Securities Corporation, that traded in securities.

[D]uring the period from September 28, 1929, to November 4, 1929, Albert H. Wiggin, through his private corporations, had sold 42,506 shares of Chase National Bank stock short for the aggregated sum of \$10,596,968. Mr. Wiggin testified that he was motivated to effect these short sales because he felt that the price of Chase National Bank stock, as well as other bank stocks, was ridiculously high and he wanted to reduce his family holdings in Chase National Bank stock....Furthermore, these short sales were effected during the period when Albert H. Wiggin, as executive head of the Chase National Bank and its securities affiliate, permitted Chase Securities Corporation and Metpotan Securities Corporation to participate in trading syndicates ... to stabilize the market, maintain their price, and obtain a wider distribution among the investing public when he knew the bank stock was selling at a "ridiculously high" price. [LH;5;21;189]

Excessive Credit. The final source of the current market conditions asserted by Congress is easy access. They state:

The celerity with which margin transactions were arranged and the absence of any scrutiny by the broker of the personal credit of the borrower, encouraged persons in all walks of life to embark upon speculative ventures in which they were doomed by their lack of skill and experience to certain loss. [LH;5;21;9]

As evident in the final line, Congress's various statements on the genesis of the current market condition are not a series of independent direct effects, but rather suggest various forms of mediation and moderation between them. In this case, the freely available credit facilitates speculation by even, perhaps especially, those ill-suited to such activity. This easy access to credit took two forms: First, credit flowing directly through the traditional margin loans from brokers through banks who were members of

the Federal Reserve System – which effectively meant your brokerage firm loaned you the money required to buy the stocks it recommended. Since, in those operations the credit was used to purchase securities, the debt was, in practice, secured through the securities purchased with it. However, as mentioned in Chapter 3, the volume of margin transactions was increasing and the Federal Reserve had taken no substantive action to curb margin-fueled speculation, even when member banks ignored their guidelines or warnings.

The second, increasingly prevalent source of easy credit, however, came from nonbanking institutions. In addition to simply fueling speculation, Congress posited links from this phenomenon to other market and economic problems:

Loans by nonbanking lenders tend to decrease bank deposits and to reduce the lending power of banks to commerce and industry; and the fact that such loans increase the cost of credit to legitimate business. [LH;5;21;13]

Thus, the prevalence of nonbanking loans to purchase securities not only increased speculative fever, but diverted capital and credit away from other areas of the economy and financial markets.

Interestingly, this is the only theory of causality with which Wall Street agrees, at least in part. While still maintaining that all practices of the stock market itself have been appropriate and normal, they concur with the potential dangers of nonbank lending for margin transactions. Charles Mitchell, President of National City Bank, testified:

Bankers, in other words, did not have control of the money situation. It was in the control of the so-called “others.” And we did everything in our power to find a correction of that fundamental fault. [SEPH;6;1815]

Various internal communications subpoenaed by the Pecora Commission confirmed that Wall Street actors were both aware of and concerned with this phenomenon as early as January of 1929, when an internal report from one investment bank goes so far as to state “*The situation is not comforting, from the business point of view*” [LH;5;21;15]. While this does deviate from the Wall Street actors’ general assertion that there are not systemic problems to be addressed, their position is not surprising since this

particular form of credit cuts into their business. At this time, most of the major securities firms were subsidiaries of banks (e.g., National City Corporation was the securities arm of National City Bank), so non-bank lending represented a source of unwanted competition. Thus, the only area Wall Street bankers and securities traders asserted a systemic problem is when “others” competed with their operations.

Normal Operations. However, other than the dangers of nonbanking loans, Wall Street actors did not advance any other statements on extraordinary events that led to the current market conditions, nor even readily admit that the current market conditions were in some way flawed. They eventually (Feb. 28, 1934) assert that:

It is the purpose of the New York Stock Exchange to assist in every possible way in the prevention of fraudulent practices affecting stock-exchange transactions, excessive speculation, and manipulation of security prices. [LH;6;22;6582]

However, they volunteer no specific examples of practices that would fall into these categories nor ever grant that any of those are related to the current market conditions. Even when they abstractly agree to assist Congress in various efforts that are beneficial for the public, saying, for example, “*If the public is to really gain any benefit by such information, my answer would be yes,*” [LH;8;23;175], they also refute the benefit of any proposed changes, as the above quote continues “*I do not truthfully conceive wherein the public would gain any benefit,*” [LH;8;23;175]. In fact, they offer no specific cases of behaviors, other than the use of nonbanking money, that need alteration, nor any evidence that the current market conditions merit attention or prevention. Independent of which particular assertions about the genesis of the current conditions they confronted, Wall Street actors took great effort to legitimate them. For example, in addressing the concerns around manipulation of stock prices via pool operations, Richard Whitney, President of the New York Stock Exchange, testified: “*But there is nothing to prevent other persons interested in that stock from selling large quantities of that stock or buying it*” [SEPH;6;2224]. Further, they suggested that because such opportunities were available to others, it was legitimate in the exchange’s eye, as evidenced when Whitney goes on to explicitly state “*If there are no improper*

transactions connected with such an operation ... the exchange does not object" [SEPH;6;2224]. In this sense, the Wall Street actors promote that view that the current market conditions, and existing practices, are actually normal, legitimate, and appropriate operating practices that did not require attention. Their view of the market is governed by what are deemed "proper" transactions, based on their own constitution. It is legitimate, as long as they themselves say it is legitimate. Below, as we look at *values and purpose*, we will see this reflects a fundamental difference in what the various actors believe is the fundamental purpose of value of the stock market.

Perhaps the most vociferous normalizing arguments came in defense of short selling. When asked what benefit short selling may offer normal operations, Mr. Whitney explained:

As one part of the whole situation, the whole question, short selling gives to the market its only compulsory buyers. The short seller must buy. No other person entering the market must buy, except the short seller. That is an aid. [SEPH;1;109]

Additionally, arguments were made that short sellers cushion the decline of stock's price as these compulsory buyers create a demand at a price below the previous price, but above where it would otherwise fall. This, they argued, created pent up demand below market price, facilitating more accurate price quoting, which was essential to normal operations. For example, in relating the testimony of another Wall Street insider, Congress reported:

Matthew C. Brush, an independent trader, testified that if short selling were barred, terrific swings in the market would ensue, since the only stock available would be the stock that somebody owned and wanted to sell outright. [LH;5;21;53]

The one exception to their normalizing approach, as noted above, is Wall Street actors' limited agreement with the deleterious effects of non-bank loans for margin transactions. But even though Wall Street actors connected the easy availability of credit with "a fundamental fault", they still did not link that causally to the boom and bust of the current situation. These, they assert, are normal aspects of the market's operations. For example, in his testimony to Congress, NYSE President Richard Whitney states:

I have never granted, nor do I ever expect to grant, that the elimination of even all speculation will prevent booms and panics and what takes place before them and after them. [LH;6;22;6603]

This quote recapitulates a common chorus from the Wall Street actors: the recent and current economic conditions are an inevitable by-product of the market system itself. In fact, Albert Wiggin, CEO of Chase Securities Corporation (the securities subsidiary of Chase National bank), goes so far as to describes this system as a “God-given market” [LH;5;21;179]. They are a taken-for-granted aspect of an institutionalized market system which, in turn, they take-for-granted; therefore they are not caused by any particular practices – they simply “are.”

Values and Purpose

In addition to tracing the genesis of the current market condition, the actors also conveyed in their testimony, questions, reports, and other communications the values they believe are embedded in the stock market, and the purpose it serves for the national economy. This provided insight into what aspects of the institution each category of actor valued the most, and, consequently, which they would strive to preserve. In general, most actors agreed in principle with all the espoused values, although priority and emphasis varied. Below, I present and distinguish between the emergent set of values –*the public interest, fairness, efficiency & adaptability, patriotism, and the free and open market itself*, and analyze how they permeated the debate and action undertaken by these actors.

The public interest. Primarily cast as the government’s responsibility to protect its citizens and frequently paired with the phrase “protecting investors,” this value is most explicit in the language of the law itself. The exact phrase “*as necessary or appropriate in the public interest or for the protection of investors*” or slight variations thereof occurs no less than 32 times in the 24 pages of the Securities Exchange Act of 1934 [LH;4;1;881-905]. These are supplemented by additional references to related values (e.g., “general welfare”).

The President also invokes the public interest in his first inaugural address and several other communications with Congress. For example, as quoted above, when calling for action to address the speculation he sees as causal, the President invoked the government's role in protecting its citizens from activities "*resulting in loss to the average investor, who is of necessity personally uninformed*" [LH;4;5;2264]. He reiterates this need in another communication to Congress, stating that, while their primary legislative focus should be on curbing speculative activity, they "*must, of course, prevent insofar as possible manipulation of prices to the detriment of actual investors*" [LH;5;17;2]. These "actual investors" are the citizens of the United States he, and Congress, were elected to serve. But, the President also makes extensive use of morally steeped language and religious allusions. For example, in his inaugural address, he states

"The money changers have fled from their high seats in the temple of our civilization. We may now restore that temple to the ancient truths. The measure of that restoration lies in the extent to which we apply social values more noble than mere monetary profit. [Franklin Roosevelt, Inaugural Address, March 4, 1933]"

By doing so, he asserts the primacy of social values and aligns them with moral authority. Markets, he implies, only exist to serve the public good through social values embodied in "ancient truths" which, his allusions suggest, are tied to biblical texts. In this light, the allusions to temptation identified earlier, resonate with the larger cultural aversion to gambling consistent with the Protestant Ethic dominant at the time (Rubstov et al., 2010)

Wall Street actors generally do not make explicit statements about the public interest or protection of investors. However, importantly, unlike other actors' statements on the genesis of the current condition, they make no explicit statements rejecting such values or goals for the stock market. They neither challenge nor endorse the link between the market and the public interest.

Fairness. Fairness of market operations is a constant theme that runs through all aspects of the debate and legislation itself, and comprises many different forms, perhaps with different definitions, but its value is frequently asserted. For example, when introduced, the report accompanying a bill asserts the

proposed legislation's (S. 3420) purpose is "*to provide for the registration of national securities exchanges ... and to prevent inequitable and unfair practices on such exchanges*" [LH;5;17;1]. This concisely captured considerable debate and testimony in Congress, where legislators often promoted the concept of a "fair market" with "fair valuations." One particular aspect of fairness that was commonly invoked by Congress dealt with ensuring people had access to accurate and complete information. Information asymmetry was framed as antithetical to this value of fairness and the subject of much discussion; and found its way explicitly into the language of the bill congress passed. For example, the enacted law explicitly prohibits the dissemination of any statement "*which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable cause to believe was so false or misleading*"[LH;4;1;890] and adopts measures "*For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer*" [LH;4;1;896].

This value of fairness is more directly embraced by Wall Street actors than the public interest. They come to explicitly acknowledge that rules should exist "*to prevent dishonest practices and all other practices which unfairly influence the price of securities*" [LH;6;22;6608]. While they do not elaborate on the value of fairness itself as the members of Congress do, they explicitly endorse it, at least abstractly, in their testimony to Congress. While they neither endorse nor reject that the market should serve the public interest, they do broadly endorse the idea that it should be fair. This suggests that they see the market, not as necessarily serving society, but as a self-contained and insular system which, nevertheless, should be governed by a set of rules established to promote fairness and establish order. The market system, as they promote it, should be fair, but need not necessarily serve any larger societal purpose.

Efficiency & adaptability. Unlike the public interest and the commonweal, which is a terminal value (a desirable end state in and of itself), fairness is an instrumental value (a desirable way of behaving or achieving that end state). Another instrumental value promoted by the Wall Street actors is efficiency

and adaptability in operations. This, again, is perhaps not surprising since the Wall Street actors are those embedded in the daily operation of the market. What is striking, however, is that this value is generally juxtaposed against a potential future image. For example, in testifying before Congress, Richard Whitney states:

Any attempt to regulate by statute and in minute detail the operation of security markets is impossible of accomplishment. Rules of law effective today would be worse than useless tomorrow and the harm that would be done before the Congress could assemble and amend them would be beyond repair. [LH;6;22;6582]

And continues, addressing specifically the attempt to legislate margin requirements to regulate lending for speculative activity, criticizing the fact it:

is limited by inflexible margin requirements which will be low in times of stable or declining prices and in periods of rising prices they will be so high as to prevent the flow of capital into business. [LH;6;22;6583]

Similarly, a letter sent from the New York Stock Exchange to its members as part of what Congress, newspaper editorials, and even recipients label a “propaganda campaign” characterizes the potential outcomes of regulation as undermining this value, alternatively stating it “*may have very disastrous consequences to the stock market,*” “*will undoubtedly require the liquidation of a substantial number of customers’ accounts,*” “*may eliminate honest and legitimate as well as illegitimate practices,*” and “*represents a tax upon the securities business*” [LH;4;6;2827-8]. The focus of these arguments is generally about the inefficiency introduced into the market as a result of regulation, and the adverse effects of such inefficiency.

While the examples provided above in the sections on *fairness* and *the public interest* show how the language of the bill explicitly emphasizes fairness and the public interest, there is no explicit reference to efficiency in the body of the bill. In the hearings, when issues of efficiency are raised by Wall Street actors, they are typically subordinated to values of fairness or the public interest by the legislators. Again, they do not reject the value of an efficient market – and explicitly value the market itself, as discussed below – but it is not as central to their position as the issues of fairness and the public interest.

Patriotism. An interesting value also promoted by the Wall Street actors is that of patriotism, and particularly patriotism towards a federal, as opposed to national, government. Echoed, to varying degrees, in today's "Tea Party" and Libertarian movements, the form of patriotism evidenced promoted States' rights and reduced federal government. This is perhaps best conveyed in Richard Whitney's prepared statement when subpoenaed to testify in front of the Pecora Commission:

I do not believe that the liberalism of today is predicated on the conception of a national as opposed to a Federal Government. I do not believe that this liberalism requires the Federal Government to operate our exchanges, to control our credit and to regulate our corporations. [LH;5;21;6584]

Here and in other statements made by Mr. Whitney and other representatives of Wall Street, they invoke a federalist patriotism and position it against the "liberalism" they see embodied in the proposed legislation. Again, the value is promoted by rejecting what they purport as potential outcomes of new regulation. For example, they assert that the inclusion of certain provisions in the bill "*suggests that the bill may have been intended to establish indirectly a form of nationalization of business and industry which has hitherto been alien to the American theory of Federal Government*" [LH;5;21;6584].

They also appeal to a broader sense of American patriotism when communicating with members of the exchange or business leaders. In a letter sent to members and the management of listed companies, they suggest that powers granted to the Federal Trade Commission by a previously proposed bill:

are so extensive that they might be used to control the management of all listed companies and, inasmuch as information secured by the Federal Trade Commission must be made public, vital statistics in regard to American industry may be made available to foreign competitors. [LH;4;6;2827]

Combined these statements promote a value of patriotism in terms of the competitiveness of American industry and in terms of their interpretation of the "American theory of Federal Government."

Free & open markets. Universally, all actors are at pains to endorse the value of a free and open market system. This is evident in all aspects of the Congressional debate and hearings, as well as the legislation which is drafted. The first paragraph of the body of the Securities Exchange Act of 1934 ends

its statement of purpose with the phrase “*and to insure the maintenance of fair and honest markets in such transactions*” [LH;4;1;882]. Even President Roosevelt, who campaigned on securities reform, explicitly states in his letter to Congress: “*It is my belief that exchanges for dealing in securities and commodities are necessary and of definite value to our commercial and agricultural life*” [LH;5;17;2]. In fact, at no point in the extensive deliberations around securities regulation captured in the legislative history is the elimination of stock markets entertained. However, although these terms were commonly employed across the spectrum of actors, there was little exposition around what the terms meant.

In fact, the only aspect explicitly referenced in these deliberations is the value ascribed to both the functions of pricing and directing the flow of capital, in the market’s “accommodation of commerce and industry.” In this sense, the market, at least ideally, both sets appropriate prices and efficiently directs capital to the appropriate areas of the economy. In fact, this particular value underlies both the values of efficiency and fairness addressed above, albeit from different perspectives. This suggests that there may be nominal agreement in the value of a free and open market, but less agreement about what would constitute one.

Jurisdiction

A third theme that emerged from my analysis of the data was the focus on jurisdictional authority surrounding securities legislation. This theme likely owes its presence to the heated campaign rhetoric between Roosevelt and Hoover, who embodied and promoted opposite views of the Federal Government’s role in securities regulation. My analysis identified three interrelated topics invoked in the discussion of jurisdiction: *Interstate commerce & the mails*, *General welfare & the national economy*, and *Constitutionality & Federalism*. In general, the first two were used as justifications for federal regulation of securities exchanges by both the President and Congress, and the last was leveraged by Wall Street actors to discredit the same.

Interstate commerce & the mails. The most commonly invoked justification for federal jurisdiction over national securities exchange rested upon the role of the federal government in matters of interstate commerce and the use of the mails. This justification becomes embodied in the enacted Act as:

Such transactions (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are effected by means of the mails and instrumentalities of interstate commerce. [LH;4;1;882]

Similarly, the President alludes to the inter-state nature of such exchanges in his communication with Congress, where he states “*The exchanges in many parts of the country which deal in securities and commodities conduct, of course, a national business because their customers live in every part of the country*” [LH;4;6;2264]. This interpretation, however, is challenged by Wall Street actors who invoke legal precedent to discredit this argument. As one example, they invoke the U.S. Supreme Court decision in the matter of *Fidelity Co. v. Kentucky* (231 U.S. 314, 1913) as precedent, which reads, in part:

The circumstance that in a substantial number of cases, even if in the greater number, there is correspondence by letter or otherwise from State to State, which might perhaps have an effect upon the conduct of other parties about entering or not entering the transaction in interstate commerce, is not controlling. [LH;6;22;6591]

The argument is that only activities “controlling” interstate commerce are subject to Federal jurisdiction, and the purchase or sale of securities does not qualify.

General welfare & national economy. Another justification invoked for Federal jurisdiction in stock markets is government’s broad mandate to promote the general welfare. This links directly to the value of promoting the public interest and is manifest in the act as passed as:

National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets. [LH;4;1;882]

This passage links the jurisdictional argument not only with the value of the public interest, but also with assertions that current market conditions have their genesis in speculation and manipulation.

Independent of that, however, throughout their deliberations, members of Congress continually point to the overall mandate to protect the general welfare and provide a strong national economy as justification for federal jurisdiction in securities exchanges. In fact, the first two sentences of the first chapter in the Report from the Senate Committee on Banking and Currency state, unequivocally,

Transactions in securities on organized exchanges and over-the-counter markets are affected with a national public interest. Directly or indirectly the influence of such transactions permeates our national economy in all its phases. [LH;5;21;5]

Wall Street seldom addresses this argument directly, although at times, they indirectly offer support for the influence of the exchanges on the national economy. For example, while urging caution in any securities reform, Mr. Whitney points out that between one-third and one-fourth of the country's wealth is tied up in securities, as a basis for his subsequent comments urging the need *"to be exceedingly careful not to upset the market upon which those people rely for the liquidation of their securities"* [LH;6;22;6605]. By doing so, he indirectly provides support for a direct association between stock exchanges and the national economy.

Constitutionality & Federalism. While the Wall Street actors do not explicitly engage the argument of the public welfare and the national economy, they do provide as a counterpoint an argument about the constitutional powers ascribed to the Federal government versus the States. Wall Street actors focus extensively on this particular aspect of the deliberations. They invoke legal counsel and prepare extensive briefs on the issue of constitutionality. In addition, they repeatedly raise the issue of State versus Federal powers in their testimony. For example, in his testimony, Thomas B. Gay, Esq., Counsel for the New York Stock Exchange, invokes the Bill of Rights to frame his argument:

May I preface what I shall have to say by a reference to the Tenth Amendment to our Federal Constitution, which provides that – "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively and to the people. [LH;6;22;6587]

In framing their argument in this manner, the Wall Street actors attempt to put the "burden of proof" for jurisdiction on those promoting Federal regulation of securities, rather than on those opposing

it. This echoes President Hoover's assertions that there is no Constitutional basis for Federal regulation and that the States should regulate their exchanges individually. Although Congress does not engage this argument directly, except as mentioned above, the President does. Perhaps as a result of the heated campaign debate, in his inaugural address, President Roosevelt states that he is "dedicated to a disciplined attack upon our common problems" and addresses the jurisdictional issue, stating:

Action in this image and to this end is feasible under the form of government which we have inherited from our ancestors. Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form. That is why our constitutional system has proved itself the most superbly enduring political mechanism the modern world has produced. It has met every stress of vast expansion of territory, of foreign wars, of bitter internal strife, of world relations. [Franklin Roosevelt, Inaugural Address, March 4, 1933]

His statement is at odds with Wall Street's arguments of Constitutionality by offering a broader interpretation of the Constitution's dynamic adaptability, which interestingly parallels today's ideological divide between "originalism" and "the living constitution."

Proposals & Actions

The final theme that emerged from the data deals with the proposals and actions promoted by the various actors given their perspectives on the genesis of the current conditions, the values and goals of the system, and jurisdictional issues. Although I attempted to limit the temporal scope of the data analyzed, the constructs constituting this theme were more dynamic than the others, as various actors were more inclined to adjust proposed solutions than they were to change their perceptions of the values embedded in the stock market or their view of the genesis of the current market conditions or on jurisdiction. Across the data, however, and without focusing on the details of implementation, the proposals and actions generally comprised four abstracted activities: *Promote Federal Regulation*, *Fight Federal Regulation*, *Promote Self-Regulation*, and *Propose Alternatives*. I provide a brief description of these below, again grounding each in the data.

Promote Federal Regulation. Abstractly, this is the most consistent action undertaken across the study period. Both the President and Congress focus almost exclusively on this general tactic throughout the study. The President begins promoting this concept as far back as the Presidential Campaign in 1932, and remains committed to this course of action through the passage of the Securities Exchange act of 1934. It is, in fact, an explicit goal which he states in his letter to Congress on February 9, 1934.

I therefore recommend to the Congress the enactment of legislation providing for the regulation by the Federal Government of the operations of exchanges dealing in securities and commodities for the protection of investors, for the safeguarding of values, and, so far as it may be possible, for the elimination of unnecessary, unwise, and destructive speculation. [LH;4;5;2264]

Similarly, Congress consistently advances this particular course of action, through the various bills they introduce, debate, and eventually pass, with considerable bipartisan support. For example, in the Senate the bill eventually passes with 83% voting in favor, despite only a 61% Democratic majority. In addition to the activities in which they engage, and by which they embody this particular form of action, the text of the legislative acts themselves contain statements of purpose that convey the intent, and frequently are introduced with comments from the sponsors which also make the goals explicit. For example, when introducing the Securities Exchange Act of 1934, Senator Duncan Fletcher states:

The bill just introduced for the regulation of securities exchanges is one of the series of steps taken and to be taken for the purpose of bringing safety to the general public in the field of investment and finance. The present step is made necessary by the misfortunes of great numbers of our people who have lost part, or all, of their savings through unregulated stock exchanges. [LH;4;5;2270]

Here, as is common, he ties the proposed action – federal “regulation of securities exchanges” to the values of the public interest. I discuss these connections in more detail in the next chapter.

Over the course of the deliberations, the specific form by which such regulation would be implemented was subject to change. For example, in a previous version of the bill, regulatory authority over the stock exchanges was to be vested in the Federal Trade Commission (FTC) instead of the newly created Securities Exchange Commission (SEC). However, the main thrust of all activities under this

heading was for federal regulation of the securities exchanges, independent of the specific form or mechanism.

Fight Federal Regulation. Wall Street's responses to consistent pressure from the Executive and Legislative branches of the Federal Government evolved over time. Initially, the response balanced both active resistance to such regulation and stepping up efforts at self-regulation begun under the previous administration. In terms of fighting Federal Regulation, there are several specific instances. For example, on October 16, 1931, after Congress begins introducing bills that would regulate various stock market activities, and in particular, short selling, Richard Whitney delivers a speech to the Hartford Chamber of Commerce which is also broadcast over the CBS nationwide radio network, to defend the practice as vital to the market.

Another active attempt to fight federal regulation is what Congress labels the propaganda campaign the New York Stock Exchange engaged in, reaching out through its members to corporations, brokers, and clients to generate anti-regulation sentiment among the constituents. A letter authored by the exchange stated:

This bill is the most important legislation affecting the stock exchange and its listed corporations which has ever been introduced in Congress. It contains sweeping and drastic provisions which affect seriously the business of all members.... [LH;4;6;2827]

The campaign resulted in what California Senator Johnson described as “hundreds of telegrams upon the subject” [LH;4;7;3058] within the first week of the NYSE sending the letter. However, it should be noted that the campaign did not uniformly engender anti-regulation sentiment. For example, on May 7, 1934, Senator Fletcher placed a constituent's letter in the Congressional Record which, in part, read:

As a stockholder in 20 leading corporations which are listed on the New York Stock Exchange, I have been urged to write to you protesting against the proposed securities-exchange act.

Instead I wish to notify you that I am heartily in favor of the measure, as it will, in my opinion, safeguard the investments of more than 20,000,000 shareholders in American corporations. [LH;4;10;8178]

The House, too, received numerous letters as a result of the campaign, many of which decried the campaign and the methods by which it was enacted. For example:

May I, as an American citizen and an admirer of the new deal, take a few moments of your valuable time and give you an interesting but nauseating sidelight of the Wall Street viewpoint of the Fletcher-Rayburn bill.

All the brokers and big-money men have started a campaign of their own in an effort to defeat the passing of this bit of legislation. They have warned their employees that if the bill passes they will all lose their positions, as their business simply cannot flourish under the new regulations; next, each employee and every member of his family were told to write to their Senator and Congressman protesting the passing of such a bill – form letters were given to all the men to take home so the folks at home could get an idea of what to write. [LH;4;9;7694]

This letter, and many others read into the record, goes further in enumerating more coercive methods, such as requiring employees to deliver unsealed, handwritten, signed letters to their bosses, and verbatim passages from multiple letters opposing legislation were read in to highlight the common language in the letters attesting to the existence of the so-called “propaganda campaign” itself.

Another way in which Wall Street actively fought against Federal Regulation was to directly oppose it in the Hearings of the Senate Committee on Banking and Currency. They were very explicit about their adversarial position. Richard Whitney, for example, opened his prepared comments at the Hearing on February 28, 1934 with the statement:

Now, Mr. Chairman and gentlemen of the committee: I appear before you in opposition to Senate Bill No. 2693 entitled “A bill to provide for the registration of national securities exchanges operating in interstate and foreign commerce and through the mails and to prevent inequitable and unfair practices on such exchanges, and for other purposes.” [LH;6;22;6582]

He then proceeds to explicitly denounce various specific aspects of the bill.

Promote Self-Regulation. Concurrent with the explicit attempts to fight Federal regulation, and often leveraged as a justification for doing so, Wall Street actors actively promote the idea of self-regulation of the exchanges. They do this both by raising awareness of regulatory reform they themselves have made, and also by asserting their own expertise and ability to implement regulatory reform internally

quickly and effectively. For example, while arguing against certain provisions of Federal regulation, they make reference to having already enacted measures which obviate the proposed legislation, as demonstrated in the following exchange:

Mr. Whitney: We have [enacted regulation] on that one. Authority to require stock exchanges to adopt rules designed to prevent dishonest practices –
Senator Costigan: “Rules and regulations”, to use your exact language.
Mr. Whitney: Rules and regulations, yes; to prevent dishonest practices and all other practices which unfairly influence the price of securities or unduly stimulate speculation. To the best of our ability, I believe we have passed such rules and regulations insofar as they affect our members. [LH;6;22;6608]

In fact, self-regulation and the adoption of rules by the exchange increases as the Senate investigation continued; however, the Wall Street actors eventually complement these two approaches, without wholly abandoning either, with the approach of proposing alternatives, described below.

Propose Alternatives. The timing of Wall Street’s actors’ adoption of this tactic comes on February 28, 1934, within two weeks of the Senate Committee on Banking and Currency investigation exposing the recent manipulation of a particular stock, which contradicted and discredited the Exchange’s internal investigation, which had concluded that no such manipulation existed. This likely undermined the credibility that the exchanges could successfully monitor and regulate their own activities and encouraged Wall Street actors to embrace the concept of federal regulation, at least publicly.

Subsequently, in the last round of deliberations, while not abandoning any of their other tactics, Wall Street actors also proposed alternative forms of Federal regulation that targeted both the purpose and the content of such regulation. For example, after criticizing various provision in the proposed statute, they state “*The purpose of Federal regulation should be to establish supervisory powers with authority to prevent abuses as time and circumstances require,*” or “*The remedy for this situation is a national incorporation law applicable to all companies doing business in interstate commerce*” [LH;6;22;6582].

In addition to proposing alternatives for the overarching goals of Federal regulation, they also propose detailed alternatives to specific aspects of proposed legislation. For example, as an alternative to

vesting regulatory authority for the exchanges in the Federal Trade Commission, they propose a new regulatory body, detailing specifics about its composition:

We suggest the creation of a stock-exchange coordinating authority to consist of seven members.

We suggest that this authority be composed of 2 members appointed by the President; 2 Cabinet officers, who might well be the Secretary of the Treasury and the Secretary of Commerce; 1 person appointed by the open-market committee of the Federal Reserve System; and 2 persons representing stock exchanges, 1 to be designate by the New York Stock Exchange. [LH;8;23;211]

By the end of the deliberations, Wall Street actors engage in all three forms of action: actively fighting certain aspects of regulation, continually promoting and enacting self-regulation, and eventually proposing alternatives to both the form and substance of Federal regulation. Table 5.1 summarizes the previous discussion, showing each actor's association with the various themes and codes.

In this chapter, I have focused on providing a detailed analysis of the constructs which emerged in my analysis and grounding them in the data. In the next chapter, I provide a discussion how these agents employed these constructs in the efforts to preserve institutional values, followed by a generalized mode of institutional guardianship and a discussion of implications for Institutional Theory and the limitations of this study in the following chapter.

Table 5.1: Summary of Themes & Codes by Category of Actor

| | President | Congress | Wall Street |
|--------------------------------|----------------|-------------------------------------|------------------------------|
| Genesis of Current Situation | | | |
| Speculation | | | |
| Manipulation & fraud | | | |
| Abuse of privilege | | | |
| Excessive credit | | | |
| Normal Operations | | | |
| Values & Purpose | | | |
| Public Interest | | | |
| Fairness | | | |
| Efficiency & adaptability | | | |
| Patriotism | | | |
| Free & open markets | | | |
| Jurisdiction | | | |
| Interstate commerce & mails | | | (reject) |
| General welfare & nat'l econ. | | | |
| Constitutionality & federalism | (pro-reg) | | (con-reg) |
| Proposals and Actions | | | |
| Promote federal regulation | | | |
| Fight federal regulation | | | |
| Promote self-regulation | | | |
| Propose alternatives | | | |
| Legend: | Not invoked | Common & Elaborated ³ | Infrequent & Unelaborated |

³ The distinction between Common & Elaborated and Infrequent & Unelaborated was qualitatively determined. For example, in most of FDR's speech, he asserts and elaborates on the role of speculation in market troubles, but occasionally mentions manipulation. Characteristically, in one letter to Congress, he focuses on speculation for the majority of the letter, but adds a one-sentence paragraph, second to the end, in which he also says measures should be taken to address manipulation, but closes by reiterating the need to curb speculation. Thus, he is coded as invoking Speculation commonly, and manipulation infrequently.

CHAPTER 6: INSTITUTIONAL GUARDIANSHIP: FORMS AND IMPLICATIONS

“[T]he work required to maintain institutions remains a relatively unstudied phenomenon. We clearly need to focus more attention on the ways in which institutions reproduce themselves. Indeed, this may be a more fundamental question for institutional research, in many respects, than the question of how institutions are created.”
(Lawrence & Suddaby, 2006: 234)

In the previous chapter, I presented an overview of the themes that emerged from my analysis, linking them to first order constructs grounded in the raw data. In this chapter, I present theory development grounded in those constructs and framed by my research questions. To do this, I first present patterns found by looking at the constructs and themes discussed in the previous chapter as employed by the various actors in the setting (i.e., by looking down the columns in Table 5.1), exploring both how the actors leverage existing institutional resources (RQ2) and which aspects of the institution they work to preserve (RQ3) in order to examine what form their guardianship activities take (RQ1). In the next chapter, I generalize about the processes that constitute institutional guardianship as embodied by those actors, presenting a generalized model, and a discussion of the implications of Institutional Guardianship for Institutional Theory more generally, as well as limitations of this study.

Patterned Responses to the Market Crisis

My preliminary findings show three distinct patterns by which influential actors not only frame, but also work to address the crisis which called the U.S. stock market, as an institution, into question in the mid-1930s. These patterns are aligned along three major categories of actors: Members of the executive branch, particularly President Franklin Roosevelt; members of congress, such as Senate Committee on Banking and Currency, Chairman Duncan Fletcher; and Wall Street insiders, typified by New York Stock Exchange President Richard Whitney and others. As shown above, all actors agree with and explicitly value at least some aspects of an open and free market for securities exchange, and consequently each of the three categories of actors’ work to preserve the stock market as an institution essential to the U.S. economy, and the values they purport it held. In fact, as a general answer to my third

research question, the distinct actors work explicitly in attempts to preserve the aspects of the institution which most directly linked to what they believed were the principal underlying values (e.g., President Roosevelt works to present aspects of the market tied to promoting “social values” and Wall Street works to preserve aspects of the market tied to promoting efficient and adaptable operations). Just as the target of their preservation activities varies from actor to actor, so do the institutional resources they leverage in their activities and, consequently, the form their guardianship takes. To demonstrate this, I now present a detailed analysis of each actor’s patterns of activity tying the four major themes that emerged from my analysis to the research questions.

The President

The President focuses primarily on the abstracted social values of the stock market captured by the construct of “the public interest.” In fact, his exclusive focus on the abstracted social values permeates and flavors all other aspects of his activity. For example, as discussed above, he commonly draws on moral and religious language in identifying the genesis of the current market conditions (e.g., using biblical allusions to “unscrupulous money changes”) and in his proposed actions (“restore that temple to the ancient truths”), as well as in the explicit linking of such values to the stock market’s purpose (“the measure of that restoration lies in the extent to which we apply social values more noble than mere monetary profit”). Although not specifically religious, his general appeal to higher level and highly abstracted values is even evident in his comments about the constitutional system itself being “the most superbly enduring political mechanism.” Thus he draws on larger cultural beliefs in abstracted, higher order values of right and wrong, not just in framing the value of the market itself and how they have been subverted by motives of “mere monetary profit,” but also in his jurisdictional claims: the constitution explicitly calls for promoting the public welfare as a primary purpose of government, so whatever action government takes in support of ensuring the public good is not only constitutional, it is constitutionally mandated.

While he maintains a normative stance in all his activities relating to the creation of the SEC, his language is more normative and religious in interactions with the general public compared to his interactions with Congress itself. In doing so, he leveraged the most appropriate institutional resources for his diverse audiences. The general public represents the larger culture of the country, and so general, abstracted cultural resources (e.g., religious metaphors and constitutionality) are most appropriate for them. With Congress, he focuses more on institutional resources associated with their roles as representatives of the people – highlighting their role as legislators and their need to “protect investors.” For example, in contrast to the language employed in his inaugural address quoted above, the President’s official communications to Congress quoted in the previous chapter are generally devoid of explicit religious allusions, but still invoke the normative goal of protecting the public interest and have a directive nature – he tasks them with passing legislation that achieves this. In this sense he draws not only on the institutional role of Congress as representatives of the people, but also the roles of legislators and asserts his culturally defined role as the “Chief Executive” of the country.

One interesting point regarding the President’s assertion of values is that it is also only in his communications to Congress that he asserts the value of the stock market as an abstracted institution, saying “It is my belief that exchanges for dealing in securities and commodities are necessary and of definite value to our commercial and agricultural life.” In speech events targeting the general public (e.g., fireside chats, inaugural address), this support for the market is implicit rather than explicit. Perhaps the taken-for-granted nature of the fundamental concept of a stock market made such explicit public assertions unnecessary. More likely, especially in light of the other content differences described above, he balances the value of the market with the value of the public welfare in his message to Congress specifically to frame and set the scope of Congressional activity, again consistent with his culturally defined role as the executive charging the Congress with a task necessary for the good of the country as a whole. The market itself is valuable to society, but we need to take action to protect both it and our

society. Since the public is not tasked with creating that form of legislation, he need not worry about setting scope in his messages to them.

His solutions, jurisdictional claims, and abstracted value of serving the public interest are all reinforced by his linking the current market crisis to, effectively, amoral activities. He roots the current situation firmly in the evils associated with gambling as manifest in “unnecessary, unwise, and destructive speculation” especially “speculation with other people’s money,” as shown in his direct assertion of speculation the primary source of current problems. As discussed above, his linking the ease of credit to temptation, and the risking of one’s pay envelope, stand in stark contrast to the cultural logic of the “Protestant Ethic” dominant at the time (Rubstov et al., 2010). In addition to the examples from the last chapter, in another communication to Congress he further asserts “*unregulated speculation in securities and in commodities was one of the most important contributing factors in the artificial and unwarranted ‘boom’ which had so much to do with the terrible conditions of the years following 1929*” [LH;5;17;2]. Therefore it is not surprising that his proposals and actions are focused particularly on eliminating such speculation. As early as his first inaugural address, the first of “*two safeguards against a return to the evil of the old order*” he calls for is “*a strict supervision of all banking and credit investments, so that there will be an end to speculation with other people’s money.*”

His use of the phrase “other people’s money” also echoes the title of the then recently published and widely-known book by Supreme Court Justice Louis Brandeis (1955 [1914]). In doing so, he also draws in the values of *fairness* and alludes to the current market conditions as resulting from of *abuse of privilege*, both aspects of that work’s principle thesis and both linked to the Protest Ethic.

His use of religious allusions that cast an idealized state as a restoration of the social values to the temple of civilization, combined with a focus on the evils of both gambling-based speculation and the temptations thereof, suggests a highly normative, restorative perspective to institutional activity. Although the President certainly advocates a change from the practices that gave rise to the problems of

1929 and subsequent years, he advocates neither a complete abandonment of securities exchanges nor a novel form. Instead he advocates the elimination of very specific evils that he asserts have perverted the institution, thus restoring the institutional arrangement to their appropriate, previous state (“the ancient truths”). His goal is the propagation of what he believes to be the *appropriate* institutional arrangements, neither something new nor the current, flawed, version.

In Lawrence and Suddaby’s terms, holding up these religious and highly abstracted values as ideals to strive for constitutes valorizing (or demonizing in contrast), or “providing for public consumption positive and negative examples that illustrate the normative foundations of an institution” (2006:230). It is important to note, however, that the institutional arrangements he valorizes are an idealized state, perfectly aligned with broad social values and purposes such as the common good, not those manifest in current practice. His stance is certainly to preserve the institution, but the institution as it should be, not what it currently is. This is consistent with his perceived responsibility to lead the country out of the current situation. In his inaugural speech, the President alludes to role of leadership and vision:

Stripped of the lure of profit by which to induce our people to follow their false leadership, they have resorted to exhortations, pleading tearfully for restored confidence. They know only the rules of a generation of self-seekers. They have no vision, and when there is no vision the people perish. [Franklin Roosevelt, Inaugural Address, March 4, 1933]

Here again, he draws on the cultural resources afforded him in his role as President – namely leadership – and asserts that leadership, without vision, is false. Thus, his role is to provide leadership and vision, and he communicates that vision through a single-minded focus on the values of the public interest and a preservation or restoration of ancient and abstracted social values. Because of his particular focus on the normative aspects and abstracted values, I call the particular form of guardianship he engages in *Value-Restorative Guardianship*, which is characterized by preserving the market as a tool in service of the highly-abstracted values of the public good, and leveraging cognitive cultural resources

associated with morality (such as religious allusion) and his authority as President (such as leadership and providing direction and scope for Congressional activity).

Congress

Congress, as the body which enacts legislation on behalf of constituents, and as a collective entity, develops and draws on a more nuanced view of the values of the stock market as an institution, and advances a more complex view of the genesis of the current market conditions. Despite their more nuanced view, however, correction is nonetheless advanced through the advancement of one singular, comprehensive bill which creates the Security and Exchange Commission. As mentioned above, Congress acts and votes in support of federal regulation across party lines and with a significant majority; in fact outside the formal votes on the actual bills, they frequently decide matters without a roll call, voting often *viva voce* (by the voice). Yet, given the collective nature of Congress, achieving that consensus likely required at least some deliberation and exposition of the issues which fostered this more nuanced perspective. Further, because of their direct involvement in the investigations and hearings of the Pecora Commission and its predecessors, Congress expresses more nuanced and multifaceted theories around the genesis of the stock market's current condition than the President. They identify direct causal links not only to speculation, but also manipulation and fraud, abuse of privilege, and excessive credit – all contributing both individually and collectively in effecting the current state. As detailed in the previous chapter, both in their the framing of questions to witnesses at hearings and explicitly in the various committee reports or introduction of bills, they point to a litany of activities which gave rise the crisis, and link them to specific values which have been compromised as a result.

It is important to note that they also explicitly link both the easy access to credit and several forms of manipulation, such as pools, to speculation. In this sense, while they recognize fraud and

manipulation as contributing to the crisis, they hold speculation as particularly important. Although similar to the President's approach, in which he subsumes all other causes under the umbrella of speculation, they do assert other causes, just none as important as speculation. They go so far as to link speculation directly to the larger issue of public welfare, saying "*Excessive speculation has caused acute suffering and demoralization. It has brought in its train social and economic evils which have affected the security and prosperity of the entire country*" [LH;5;17;3]. While, as in that example, Congress does employ the term "evil" to describe practices they deem as harmful to the public interest, they generally do not employ biblical illusions per se; nor are their deliberations as morally steeped as the President's, even though they are normative.

In addition to a more complex view of the genesis of the crisis which engages multiple causes, they also simultaneously promote multiple values which they believe the stock market serves. Beyond the overarching value of the public welfare, Congress is more explicit and consistent in their assertion of the values of fairness and of the value free and open market as an end in itself. Further, compared to the President, they have more extensive and extended interactions with Wall Street actors, through which they are made aware of the values of efficiency and adaptability and of patriotism advanced by that group.

As the legislative body responsible for establishing any regulatory authority, they draw more definitive connections between the genesis of the crisis and the specific proposals which are designed to address them. Unlike the President, who speaks in highly abstracted, normative, and moral language, Congressional proposals address specific examples of activities that contributed to problems in the stock market, and explicitly show that they are inconsistent with the values the institution is supposed to reflect. For example, in promoting federal regulation, they state:

Several devices are employed for the purpose of artificially raising or depressing security prices. Those which appear to serve no legitimate function are specifically prohibited. Among such practices are fictitious or "wash" sales; "matched" orders, or orders for the purchase and sale of the same security emanating from a common source for the purpose of recording operations on the tape and thereby creating a false appearance of activity; and other transactions specifically designed to manipulate the price of a security.

The stock exchanges, and particularly the New York Stock Exchange, have contended that practices of this type are already prohibited by their rules. Yet testimony before the committee has shown that a broker, while operating a syndicate account in a copper stock, caused the sale of 35,000 shares by the syndicate and the purchase of 35,000 shares by an individual member of the syndicate on the same day. Although any intention to accomplish a "wash" sale was disclaimed, nevertheless the result of the transaction was to bring about an immediate rise in the market value of the stock from \$192 to \$196 a share with a handsome profit to the individual customer." [LH;5;17;7-8]

Such exposition is common in the speech events of both Wall Street and Congressional actors, and is useful for showing the connections they make between the genesis of the market conditions, values, and proposed action. In this specific example, Congress is discussing one aspect of proposed action - federal regulation that eliminates certain practices that manipulate price - and grounds the recommendation in a particular example that makes a causal assertion (pool operations artificially raised the stock price through manipulation and abuse of privilege) which violates particular values (in this case, explicitly interfering with the market's pricing function, fairness, and protecting the public interest). Here, they also refute the proposed action of self-regulation, showing that, despite being in place, it was ineffective in eliminating these practices.

Congress echoes the President's focus on the value of protecting the public interest, but does so in both abstract and specific terms. They regularly invoke mantras of "the public interest," "protecting the investing public," and "protection of investors" but couple them with claims of jurisdiction for action. For example, Section 2 of the Securities Exchange Act of 1934 begins:

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto... [LH;4;1;881]

It is interesting to note again that this opening statement contains three of the four major themes identified: values they are striving to protect, in this case the "*national public interest*," an abstracted proposal for action, "*regulation and control of such transactions and of practices and matters related thereto*," and links those to the jurisdictional claim, it is not only justified, but "*necessary*" to ensure the

alignment between the idealized values, the national public interest, and those manifest practices. This link to the values of a national public interest is central to Congress's assertions of jurisdiction.

Importantly, though, instead of simple and sweeping assertions of right and wrong or good and evil, Congressional activity is steeped in *due process*. They hold hearings, hear testimony, cross-examine witnesses, and hold debates on the floor of Congress. Their language and actions are guided by the institution of legal proceedings. While the content of their proceedings references “the public interest” and protecting “the national economy” – after all that is their charge as the duly elected representatives of the public – they primarily leverage the power vested in them by the institution of Congress itself. So, it is from their role as elected law makers that they hold hearings to collect data and make assertions about the genesis of the current condition; that they work to protect the national economy; and that they propose and take action. In this sense, most of Congress's activities are linked more directly to their jurisdictional claims about their role in protecting the public interest and national economy. They leverage the institution of democracy, or more specifically, elected representation, throughout their activities. This is perhaps best exemplified when they read letters from their constituents into the Congressional Record. They give voice to the people they represent. But, they also serve as the people's representative during the hearing, during the debates, and during the drafting of legislation, as evident by their mantra of “protecting the public interest” in framing their actions, whether that is passing a resolution that authorizes them to begin hearings and subpoena Wall Street executives or passing a bill that creates the Securities and Exchange Commission.

Interestingly, although Congress's abstracted proposed action – federal regulation of securities exchanges – does not change over the course of the debate, the specific details evolve over the course of the deliberations. These changes move the proposed legislation to more conservative positions that increasingly preserve more aspects of the current institutional arrangements (e.g., specific practices), and occur primarily when there is explicit contestation over whether a practice violates the values embedded

in the institution. For example, as discussed above, Wall Street explicitly challenges the assertion that short-selling is at odds with a free and open market that supports the public interest. As the debate ensues, the proposed legislation becomes more conservative on this point – short selling is forbidden outright in a bill proposed early on but deferred for further consideration in the enacted legislation, which instead states it shall be unlawful:

To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
[LH;4;1;891]

This qualification “in contravention of such rules and regulations as the Commission may prescribe” becomes a regular placeholder for specific aspects of regulation that become points of contestation during the debate if that contestation questions how practices violate the values embedded in the market. In this case, as described above, the practice of short sales is defended by Wall Street actors as supporting the value of market efficiency and even protecting investors (the public interest) from precipitous price drops. While Congress continues to explicitly challenge that assertion, they nonetheless defer taking any immediate and explicit action on short sales in the enacted regulation.

This paradox is explained by the primacy of the value of the national public interest; because of the economic arguments which suggest a threat to the national public interest from eliminating short sales, they defer taking action, at least until the newly created commission can investigate and resolve the competing theories. This example shows that, without completely abandoning the overarching goals of the proposed legislation, details are refined over time to ensure that valued aspects of the institution are not lost. So, in light of debate over the relative deleterious and salubrious effects of short selling, Congress moves from a position of banning them outright (consistent with their original position that they helped spur the crisis) to studying them further (representing the possibility that they may actually serve

some function beneficial to the public interest). In a sense, Congress appears to adopt a “do no harm” philosophy with respect to the principal value of the commonweal.

Typically, when there is contestation over the link between a proposed action and the underlying values, as in this case, there is also a recommendation from the Committee for the Commission to undertake a study and take appropriate action later. This deferment is, arguably, a result of successful guardianship by those supporting the contested practices and accounts for the lack of direct federal regulation of specific stock exchange practices. Or, more generally, this movement can be viewed as the result of a dialect process of two different forms of Guardianship – Congress’s and Wall Street’s – influencing each other over time. Although the end results more closely resonates with Wall Street’s position in this case, the granting of authority to the newly created Commission over the future of short sales does reflect Congress’s original position to some extent.

Importantly, while Congress echoes the President’s views on the genesis of the current market conditions, at least in terms of the primacy of speculation, and the institution’s values and purpose, because they draw on cultural resources of *due process* or legal proceedings, the way they frame the scope of required action is quite different. As opposed to the highly moralistic language of “evil” rife with biblical allusions of money lenders in the temple, Congress attributes the disconnect between values and practices primarily to the exploitation of legal loophole explicitly saying with the introduction of the bill later enacted, “*the bill seeks to prevent those devices by which skillful financial lawyers have in past decades been able from time to time to thwart, to hinder, and to delay the will of the Congress*” [LH;4;5;2270]. This is, perhaps, not unexpected; the President embodies the role of a charismatic leader while Congress rightly concerns itself with pragmatic matters of legislation. Therefore, it is appropriate that their perspective is that the problem they face is not an epic battle of good and evil, but rather a pragmatic question of undesirable practices becoming commonplace because of legal loopholes or lack of enforcement. Consequently, while they do describe certain actions as “evil,” their focus is on enacting

legislation that is more effective at *policing*, or “ensuring compliance through enforcement” (Lawrence & Suddaby, 2006:230). Both jurisdictional claims and views on the genesis of the situation are built on resources from the legal institution, and consequently assert the inadequacy of the current policing systems, namely exchange self-regulation. And, again consistent with the cultural logic of *due process*, they provide considerable exposition of this, recounting specific instances where the exchanges were unable to police, or even investigate, fraudulent practices. One Senate Report devoted an entire section to the topic of “Inadequacy of Self-Regulation of Exchanges” which read, in part:

Especially during periods of popular agitation, or when legislative action has been threatened, the exchanges have taken steps to raise the standards for the conduct of business by their members and to require corporations to furnish more adequate information for the benefit of investors. Such attempts, however, far from precluding the necessity of legislative action, emphasize its need. [LH;5;17;4]

It then goes on to list examples of such inadequacies, enumerating cases where the exchanges have failed to effectively prevent their members from engaging in specific practices – even when they attempted to. They also offer structural explanations, akin to legal testimony, for why exchanges cannot self-regulate, steeped in the power dynamics that emerge from the exchanges’ dependence upon its members for survival. Here, although they find the genesis of the current conditions in a nuanced pattern of speculation, manipulation, and easy credit, they effectively assert that common underlying problem is the lack of appropriate legal framework and governance.

Another consequence with having no policing body is that some of the practices embedded in the institution have, effectively, outlived the technical requirements that gave birth to them (Selznick, 1957). The values underlying the institution, namely serving the national public interest and fairly supporting the national economy with free and open markets, have not changed, just the appropriate ways to support them have. But no one has been policing the system to prevent them from becoming misaligned. In fact, the Committee on Interstate and Foreign Commerce, the House of Representatives

counterpart to the Senate Committee on Banking and Currency, explains the purpose and intent of legislation as follows:

The bill is conceived in a spirit of the truest conservatism. It attempts to change the practices of exchanges and the relationship between listed corporations and the investing public to fit modern conditions, for the very purpose that they may endure as essential elements of our economic system. The lesson of 1921-29 is that without changes, they cannot endure. [LH;5;18;3]

Because the intent of their action is re-establishing compliance with appropriate practices that reflect established values, I term this type of guardianship *Corrective Guardianship*. This form of guardianship seeks to preserve the functional role of the market in the national economy, thus serving the public good, drawing not on abstracted moral values of right and wrong, but on the legal institution's concept of *due process* and Congress's constitutionally mandated role as the legislative representation of the citizens. While the new legislation may effect change, it is framed as a course correction, designed to get institutional practices back on the right track.

Wall Street

Wall Street actors did not generally exhibit the same views on the current market conditions, the roots thereof, or proposals for action as the other actors. The most significant difference is that for both the President and Congress, they attempted to find the genesis of a crisis in the stock market of 1929, which was anomalous, destructive, and in need of correction. Wall Street actors, while certainly neither unaware nor unaffected by the decline and crash, did not publically problematize the events from 1929 to 1932 as something that needed to be explained or fixed, but rather as a normal part of market operations. While they openly and explicitly offered support and promised to "cooperate fully in attempting to prevent unwise or excessive speculation and abuses or bad practices affecting the stock market," they repeatedly insisted that current operating principles and self-regulation were sufficient to address these issues.

While they publically promote a perspective that justifies, rather than problematizes, not only prior activities but the boom/bust cycle of the market itself, Wall Street actors do implicitly embrace certain causal links, as is evident in their actions (e.g., making multiple adjustments to their constitution and bylaws). Because those changes were not carried out in highly visible forums, the record of debates and insights into the values and causal links to specific practices underlying such changes are not available. It is possible that while publically refuting popular theories on the genesis of the current conditions, they adopted them in private and attempted to address them internally. Alternatively, they may have recognized that other powerful actors (e.g., Congress) were making certain causal links and made changes in efforts to stave off federal regulation. What is in the public record is that Mr. Richard Whitney, president of the New York Stock Exchange, said that even the most stringent changes they made to their bylaws were unlikely to succeed in eliminating the activities they targeted. This suggests that such actions were more ceremonial in nature, and that adopting such by-laws was a form of decoupling (Meyer & Rowan, 1977) the public image of the Exchanges from their internal operations. The Exchanges, while internally aware of their inability to effect behavioral change through by-law modifications, may well have proceeded with the by-law modifications in order to signal that they were taking appropriate action to deal with issues that had been made public to their external stakeholders (e.g., Congress, investors). Such actions, like the evolution of the legislation relating to short-sales discussed above, suggests a dialectic process where Wall Street's actions (enacting by-law changes, even if only ceremonially) may have been influenced by Congress's guardianship activities.

While Wall Street actors express few thoughts on the genesis of the current market conditions – other than that nonbank lending was problematic and that busts and booms were normal aspects of the securities market – they did participate actively in both hearings before committees and testimonies before Congress. Drawing on their perspective that the events of the previous five years were normal operations, they also attempted to engage the public at large to thwart any legislation aimed at securities

regulation both generally as well as specific aspects of specific bills, as discussed in the previous chapter. In this sense, they posited what *would* happen should specific bills or various portions thereof pass, and position them as threats to the values of efficient operation and of a free and open market. Implicit in most of these is a comparison to the current operation of the stock market, which they hold as the idealized state. An excerpt of Richard Whitney's letter to all members of the New York Stock Exchange provides an example:

I call your particular attention to subdivision (a) section 6 [of the proposed bill] which prohibits members extending credit upon securities unless they are registered upon a national securities exchange. This will make all unlisted securities worthless for margin purposes and consequently will discriminate against small or local enterprises which are not listed on any exchange. Subdivision (b) of this section fixes minimum margins which, depending upon conditions, can vary between 25 percent and 150 percent. At the present time the latter provision will be applicable in the case of practically all stocks, on account of the low prices reached by securities within the last 3 years, but not now prevailing. These two provisions, operating together, will undoubtedly require the liquidation of a substantial number of customers' accounts. [LH;4;6;2827]

Implicit in his argument is that the liquidation of those accounts is undesirable. Since such liquidation is undesirable (which Mr. Whitney later states explicitly when testifying to Congress), the preferred alternative, that the accounts are not liquidated, implicitly promotes the current arrangements. This pattern of unfavorably comparing consequences of proposed regulation with the current arrangements is consistent throughout their testimony, communications to members, and even public addresses, such as Mr. Whitney's speech to the Hartford Chamber of Commerce broadcast on national radio. Further, this particular example serves aptly as a synecdoche for the legislation and the market system as a whole. The Depression Era market suffered from an overarching loss in liquidity, and this example alludes to that phenomenon. Somewhat paradoxically, Mr. Whitney suggests that changing the very practices that created the current liquidity issues will, in fact, create more significant liquidity issues in the future. Interestingly, there are some provisions in the enacted law that address margins, suggesting this attempt at guardianship was less effective, for example, than those focusing on short sales.

Wall Street actors steep their actions in the role as the financial experts – drawing on cultural resources associated with professional expertise and jurisdiction – and as the leaders of business and industry. To fight the possibility of federal legal authority, they engage constitutional lawyers, again drawing on the cultural resources of the professions to legitimate their position. The campaign they undertake to engage the public in thwarting federal regulation flows through the exchanges to the senior management of corporations who, as described above, attempt to enlist their employees in the effort through coercive means. As such, they supplement the cultural resources of professional expertise with those of bureaucratic authority – or attempt to.

Overall, their focus is on thwarting any changes to the current operations of the exchanges, which they believe already align with the principal goals of efficiency and adaptability, drawing on professional and bureaucratic authority. This focus is based on an implicit assumption that the current state is the idealized state and that the current mechanisms of cause and effect are already achieving the desired goals, and is most consistent with what Lawrence and Suddaby term *detering*, or “establishing coercive barriers to institutional change” (2006:230). Although some of the barriers they are attempting to establish are more cultural/cognitive in nature, consistent with propaganda and rhetoric, than coercive, they do at one point threaten a “banker’s strike” in which they would not issue new securities as a form of coercive deterrence. Further, as discussed above, citizens reported recruitment tactics for the campaign to thwart legislation that were coercive in nature (e.g., “I’d lose my job”), and the very attempt to enlist employees to write to elected representatives suggests a coercive form of two-step leverage (Gargulio, 1993). Also, their jurisdictional claims around constitutionality are clearly coercive in nature. I label this perspective which most closely reflects the concept of “resistance to change,” *Instrumental Guardianship*, since it seeks to preserve instrumental aspects of the institutional practices based in formal rationality, rather than those based in substantive rationality and terminal values. They strive to preserve the efficient and adaptable market as a machine for directing capital, irrespective of any larger social values or serving

the public interest, and draw on the cultural institution of the professions, leveraging professional expertise and jurisdiction as resources in their efforts to do so.

While the actions taken by all three categories of actors are unique, they all represent different forms of Institutional Guardianship, actively working to preserve different valued aspects of the institution of the stock market, and drawing on different resources to do so. As discussed above, there is some evidence that these various forms of guardianship acted upon each other in what may have been a dialectic process that, taken together, shaped the legislation eventually enacted that created the Securities and Exchange Commission. Table 6.1 summarizes the three approaches to Guardianship outline above which were all evident in my analysis. The column labeled “Focus” describes which aspect of the institution actors targeted for preservation (addressing research question 3) and the narrative account discusses the of form their activities (research question 1) and the resources they drew upon in those activities (research question 2).

Table 6.1: Patterns of Construct Use by Actor

| Actor | Approach | Focus | Narrative Account & Cultural Resources |
|-------------|-------------------|---|---|
| FDR | VALUE-RESTORATIVE | Overarching social values | Drawing on highly abstracted values of right or wrong and good or evil, replete with biblical allusions, the President asserts the stock market exists to serve “social values” and “ancient truths”, but has been corrupted by those focused on “mere monetary profit” and must be restored to its proper role in society. |
| | CORRECTIVE | Aligning practices with public interest | Drawing on the legal institution, <i>due process</i> , and their Constitutionally mandated role as elected representatives, Congress asserts the stock market is a tool in country’s economic machinery, but practices are misaligned with “the public interest,” the “national economy” must be protected through effective policing of market operations through refined regulation. |
| Wall Street | INSTRUMENTAL | Operational practices | Drawing on the institution of professions, and the accompanying concepts of expertise and jurisdiction, Wall Street actors assert the market logic itself, as manifest in an efficient and adaptable mechanism to direct the flow of capital, and profit motive are the sole and appropriate drivers of stock market; everything is operating appropriately and any attempted interference is futile and dangerous. |

CHAPTER 7: A GENERALIZED MODEL OF INSTITUTIONAL GUARDIANSHIP

“Creativity depends on the researcher’s analytic ability, theoretical sensitivity, and sensitivity to the subtleties of the action/interaction...”

(Corbin & Strauss, 1990: 19)

In my analyses, I have shown that actors leverage themes relating to the *genesis of current market conditions, values and purpose, proposals and actions, and jurisdictions* to facilitate institutional persistence, manifest in three distinct forms of guardianship. Yet, all forms were evident within the context of this study and are all consistent with different aspects of Institutional Maintenance (Lawrence & Suddaby, 2006). More specifically, they all represent variants of institutional guardianship as advanced earlier in this dissertation. In this section, I generalize from the three particular forms of guardianship evident in my analysis and draw on theory to propose a more abstracted model of institutional guardianship. This model is not meant to represent “the” institutional guardianship that was evident in that case; the three forms I found were delineated and contrasted in the previous chapter. Rather, my goal in this chapter is to compare across the three different forms to find commonalities and abstract from there to a more generic model of what guardianship may look like generally. Before doing so, however, I revisit the relationship between values and institutions because of the central role of values in the various forms of guardianship outlined above and summarized in table 6.1.

Institutionalization: Making the Moral Factual

Institutions are socially constructed (Berger & Luckmann, 1966), and embody **both** the externalization of valued patterns of social interaction and the internalization of public, shared schemata which have become taken-for-granted. Work exploring the institutionalization process, by which institutions are established, labels the link between these the “objectivation moment,” which translates the collective production of repeated and valued patterns of social interaction into normative and cognitive structures reified as objective “facts” of the social world into which we are socialized. To the extent that the original patterns of social interaction are valued for their moral characteristics (i.e., they are the

“right” patterns of interaction), as opposed to their technical characteristics (i.e., they are the “most efficient” patterns of interaction), institutionalization, and particularly objectivation, is the process of making the moral factual (Zucker, 1977). Interestingly, if patterns of social interaction emerge from motives of efficiency, they are often infused with moral value during the institutionalization process. For example, what we term “developed societies” emerged around social support and specialization of labor, which were efficient ways to share and divide the necessary work to master the land and, eventually machinery. Yet, the very term “developed” suggests that a moral value has been infused into those practices.

This equating of the moral with the factual represents an idealized state of balance between Weber’s constructs of formal and substantive rationality (Weber, 1948). He warns that formal rationality (that of technical efficiency) promoted in the absence of substantive rationality (that of morality and values) can result in an “iron cage” of bureaucracy more concerned with the efficiency of means than the appropriateness of ends. Neo-institutional theorists adapted this metaphor, originally focusing on the cultural-cognitive constraints inherent in the internalization moment. Nonetheless, the correlation between value and power implicit in institutions (Stinchcombe, 1965) endures with the institution, or should – as long as the underlying values remain valued, institutional arrangements that reflect them persist, or should.

Misalignment of Values and Practices

However, one consequence of the institutionalization process is that patterns of behavior become “taken-for-granted” and therefore, the rationalities, formal or substantive, behind them are no longer elaborated. Typically, leaders may initially provide explicit justifications for the patterns of behavior, making their value explicit. Over time, however, the actors inhabiting institutions may lose track of such values and the patterns of action become taken-for-granted and pre-conscious; successive generations are no longer personally aware of why the actions are patterned the way they are. This may cause patterns of

action to persist even when the original conditions are no longer valid, as alluded to when practices are said to be “infused with value beyond the technical requirement of the task at hand” (Selznick, 1957: 17). Research has shown that institutional entrepreneurs identify such situations and work to establish new practices that are consistent with changed values (e.g., Greenwood & Suddaby, 2006; Maguire & Hardy, 2009).

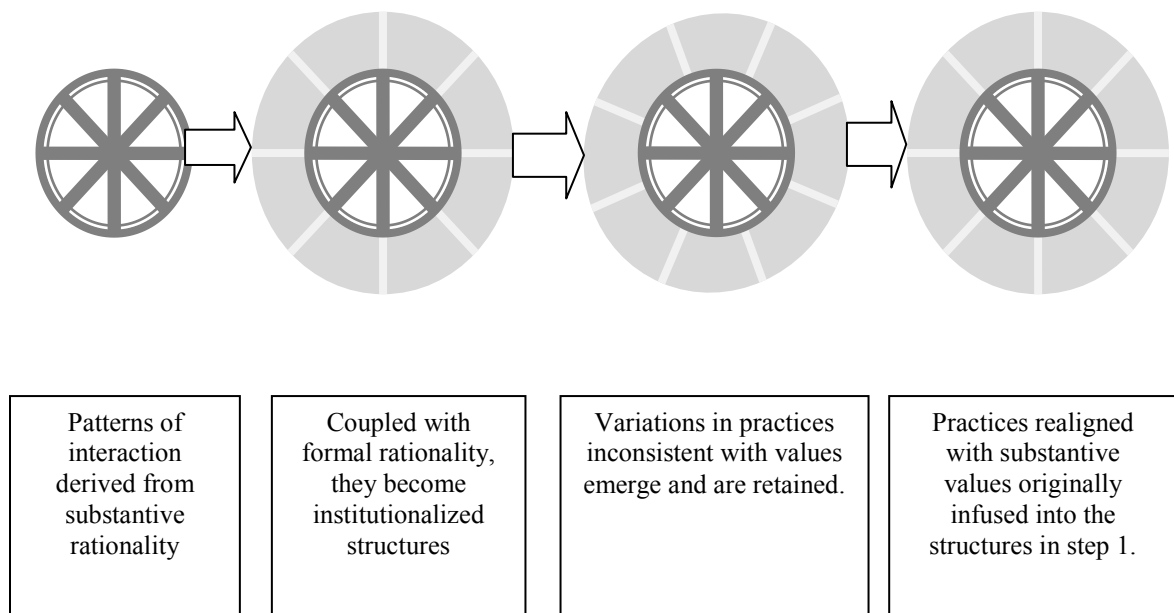
Alternatively, however, the values may not change, but the practices may. Because reproduction is not perfect, mutability (Clemens & Cook, 1999), transposability (Sewell, 2002), and other minor variations are subject to selection and retention processes (Weick, 1995) which can lead to a misalignment between practice and value, even if the values remain relatively constant. Although institutional forces should minimize such variations, they will not eliminate variation completely and may, under certain conditions, enable variations (Seo & Creed, 2002; Weber & Glynn, 2006; Zilber, 2002). In such a case, the structures and patterned interaction no longer embody the values, especially the longer-term values, which originally gave rise to the institutional arrangements. If they become sufficiently misaligned that the taken-for-granted patterns of social interaction are called into question, the institution itself comes under threat of deinstitutionalization or change.

This condition is evident in the perspectives of the President and Congress in this study. Triggered by the ongoing market crises of the past five years, they assess both the values they believe to be embedded in the stock market, and the practices manifest in its operation. They find them misaligned, but ascribe primacy and authenticity to the substantive rationality of abstracted values (e.g., public interest, fairness), and assert the genesis of the current conditions lies in practices which are inconsistent with those values (e.g., manipulation and fraud, abuse of privilege, speculation). In this case, the loss of taken-for-grantedness precipitated by the crises does not yield wholesale institution change; rather, these actors work to realign the practices with the values of the substantive rationality which they purport spawned the structures in the first place. In effect, the guardians work to preserve those aspects of the

institution which they value, by changing various aspects of the institutional arrangements (practices and structures, and the power embedded in them) they believe no longer appropriately reflect those values.

This process, which I term Institutional Guardianship, is depicted pictorially below in Figure 7.1, with the inner wheel representing the values embedded in the institution, and the outer wheel the practices manifest in the structure and interactions.

Figure 7.1: Generic Process of Institutional Guardianship



While the Wall Street actors, who hold as primary the values of efficient market operations, do not find a misalignment between that value and existing practices, they do see the potential federal regulation of the market as interfering with that underlying value. Thus, while they do not experience the misalignment represented in the third wheel in the sequence, they fear it will occur if the market is regulated, and look to prevent it from happening. Thus, their actions to prevent the change in structure – more consistent with the current treatment of institutional maintenance or defensive institutional work (Maguire & Hardy, 2009) – can be framed as a pre-emptive form of guardianship. The only significant

difference, other than what values are perceived to be embedded in the institution, is in the timing of when they engage in the guardianship activities vis-a-vis the misalignment.

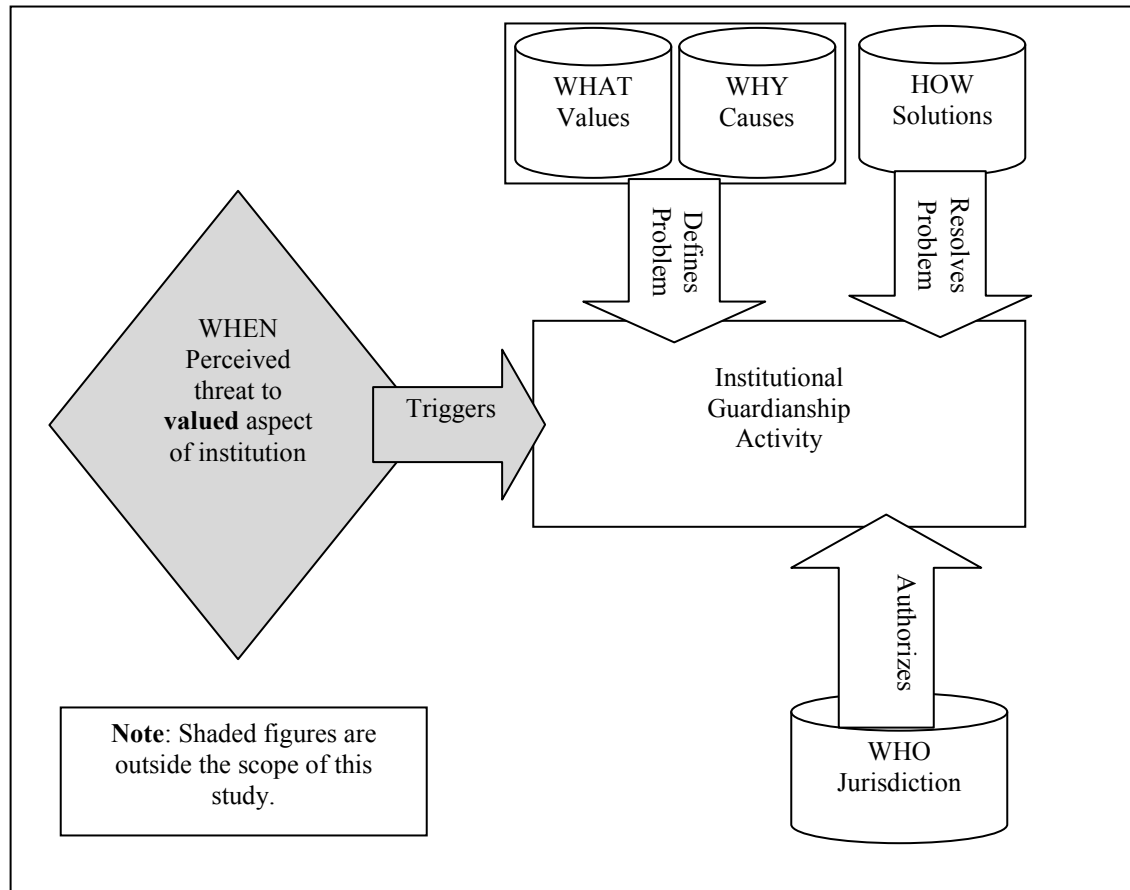
Notably, this model ascribes more agency and values-based deliberation to institutional actors than most institutional research, with the possible exception of some work in institutional entrepreneurship (e.g., Suddaby & Greenwood, 2005). It also suggests a way out of Weber's (1948) "Iron Cage." Consistent with a more Selnickian, value-laden perspective on institutional leaders (Kraatz, 2009), it suggests that, at least some institutional actors may hold the institution itself, and the manifest institutional arrangements, accountable to the values which gave rise to it.

To realign the structure with values, actors draw on the cultural resources, such as cultural toolkits (Swidler, 1986) or cultural vocabularies (Weick, 1995), to reassert the substantive values and realign practices with them. This mirrors, to some extent, institutional preservation, where actors search "for ways to carry over norms from the previous regime into the construction of the new institutional order." (Hirsch & Bermiss, 2009:263). However, instead of attempting to preserve only a subset of valued aspects of the institutional order, they instead attempt to re-institutionalize the entire order. As outlined above, these cultural resources can vary, and will typically align with the values the guardian seeks to preserve. President Roosevelt sought to preserve the abstracted "social values" of the "ancient truths" and used highly abstracted and morally based resources, such as biblical allusion. Wall Street sought to preserve efficiency, and drew on cultural resources aligned with their status as professionals, and the accompanying expertise and jurisdiction.

Based on this study, I propose a generalized model of institutional guardianship, described below and depicted graphically in Figure 7.2. Across all three categories of actors, guardianship behavior was triggered by a perceived or potential threat to the values embedded in the institution, although actors varied in what they valued or the perception of the threat. The actors then uniformly engage in

guardianship activities comprising three distinct tactics – *Defining the problem*, *Proposing action*, and *Authorizing action* – and draws on cultural resources in all of them.

Figure 7.2: A Generalize Model of Institutional Guardianship



Defining the problem. All three categories of actors made public assertions of the problem, explicating the perceived misalignment between values and practices. In doing so, they made statements about the values embedded in the institutional order, making their beliefs about the values embedded in the institution explicit. To communicate this, they employ cultural resources which conveyed those values: stories of unfair advantage, images of societal distress, allusions to biblical and moral parables, or the potential of nationalized businesses or frozen markets. While these cultural resources offered a

values-based explanation of WHAT purpose the institution serves (whether based in substantive or formal rationality), they were coupled with explanations of WHY such purposes are not served by existing or proposed institutional arrangements, by either assigning causality between existing practices and the genesis of current market conditions or hypothesizing undesirable consequences of proposed activity. Here, the institutional guardians linked specific practices manifest in the institution with outcomes contrasted to the values they purported it served. For example, stories of how pool operations created misleading signals about interest in a stock showed that manipulative practices undermined the value of protecting investors and fairness. Similarly, hypothetical stories of how proposed margin requirements would precipitate the liquidation of investors' accounts linked changes to existing practices to undermining market efficiency.

Action. Importantly, guardianship activities go beyond the problem definition. By the time guardianship is triggered, the misalignment, or potential thereof, is such that awareness of the problem alone will not solve it. Although outside the scope of this study, considerable efforts were made in the prior year to raise public awareness of the fundamental incompatibility between speculation and the values embodied in the stock market, yet dangerous speculative activity continued. Given that institutionalized practices, by definition, have a propensity for persistence, action is necessary to realign practices with the underlying values. The elaboration of proposed values allows for actors in the institution to validate that such actions are, in fact, consistent with the underlying values. Thus, in this study, proposed actions were framed in light of the values they supported, aligned with each actor's subjective assessment of the institutions underlying purpose, as is evident in the prevalence of the phrase "as necessary or appropriate for the public interest or the protection of investors" in proposed legislation.

Further, the link between values and proposed action can be contested, as happened with several specific aspects of legislation proposed prior to the enacted statute. Thus, guardianship requires that the guardian has made a clear link between the proposed solutions and the WHAT and WHY contained in the

problem definition, explaining HOW such action will restore the appropriate values. Otherwise, such propositions may be seen as potentially misaligning other aspects of the institution and trigger their own guardianship responses, as happened with proposals to eliminate short selling.

Authorizations. Finally, it is important that institutional guardians are authorized to engage in such behaviors. In this particular study, the context is highly politicized, so the issue of authorization is perhaps more salient – and contested – than it may be in others. However, as outlined in other work (Rubstov et al., 2010), for much of its history, the stock market operated under the logic of a private club, outside the realm of government action. A significant part of Congress’s activity is to provide cultural accounts for WHO has the responsibility for ensuring the institutional practices and values are aligned. Interestingly, unlike Lawrence’s work on institutional strategy (1999), in this case agents previously considered outsiders to the institution authorize themselves by drawing on superordinate cultural accounts (e.g., public welfare). The Acts of 1933 and 1934 represent the first direct federal regulation of securities exchanges, reflecting a shift in logics from the exchanges as “private clubs” to “public institutions” (Rubstov et al., 2010). Although the actors involved – The President and Congress – held positions of institutionalized power in other aspects of society, their actions here reflect an ability to leverage that power into a previously-disconnected institution. This self-authorization through appealing to broad values embodied in the institution has also been shown in efforts to claim traditional institutional roles (Creed et al., 2010), but this suggests the guardians created and claimed *new* institutional roles.

Across all three activities, the integral role of cultural resources in connecting values, actions, jurisdiction, and problematizations is an important aspect of institutional guardianship. This is consistent with other work that has looked at the role of symbols (Glynn & Abzug, 2002; Zilber, 2002, 2006) and other cultural resources in institutional work, and strengthens Hirsch and Bermiss’s (2009) discussion of the importance of cultural context in institutional work.

Implications for Institutional Theory

This study makes several important contributions to Institutional Theory specifically, and to organizational theory more broadly. First, it begins to address a gap in the current work that examines agency in institutional environments by focusing explicitly on agency used to preserve or protect existing institutional arrangements. The agents in this study were not cultural dopes caught up in the mindless propagation of the institutional context in which they were suspended. Instead, they exhibited many of the attributes of the ‘hyper-muscular’ change-agents usually found in stories of institutional entrepreneurship (Powell & Colyvas, 2008), yet their focus was on stabilizing the institution, rather than changing it. Extending other work in this area (Angus, 1993; Zilber, 2009), this work specifically examines the use of agency for persistence in contested, rather than non-contested, contexts. This suggests that institutional persistence, at least in some cases, may be the result of on-going, continuous effort, rather than a perpetual state established early on by institutional leaders but then left unattended. This has implications for our understanding of institutional entrepreneurship, especially entrepreneurship aimed at changing existing institutional arrangements as opposed to creating new ones. Entrepreneurship may well require different forms and tactics in the face of overt guardianship as opposed to in its absence.

Second, and related, because these agents did resemble the “hyper-muscular” change agents typically associated with institutional entrepreneurship, it raises new questions about the availability and use of power within institutions. Remembering that Stinchcombe (1968) asserted that powerful actors are committed to specific values through the institution, it seems reasonable that they would exercise that power in support of persistence. Yet Fligstein (1997) observes that under conditions of threat or crisis, those powerful actors cannot draw directly on the power afforded them by the institution itself, since the very appropriateness of those arrangements – and therefore of the distribution of power – has come under question. This is evident in this work primarily in the various forms of authorization employed by both the President and Congress. While Wall Street actors, who held traditional positions of power in the institution, attempt to marshal their institutionally-sanctioned power, the President draws on the power of

religion and morality and Congress on the power of the legal system and due process. It appears that the uncertainty precipitated by the threat to the institution is conducive towards, or perhaps even requires, the assertion of forms of power previously excluded from the institution.

Third, it begins to delineate different ways in which agency may be used for preservation by identifying different patterns of cultural resources (e.g., morality, due process) and values (ancient truths, national interests) that are invoked by actors occupying different positions in the institutional environment. Further, the distinct patterns of action and resources align with various aspects of the subset of institutional work labeled institutional maintenance (Lawrence & Suddaby, 2006). This study provides empirical evidence for several different forms on institutional maintenance, and suggests a relationship between such tactics and various cultural resources and the institutional role of the agent.

Fourth, this work continues to demonstrate that the constitutive elements of institutions (i.e., cultural/cognitive, normative, and regulatory) may be more interdependent than discrete. Following work that shows government regulatory action is influenced by the cultural/cognitive assumptions of the dominant institutional logic (Rubstov et al., 2010), this work demonstrates that institutions are non-discrete. Institutions are not only embedded within each other (Holm, 1995), but may be built on overlapping values allowing one set of institutional actors (e.g., politicians) to leverage their institutionally defined roles into other institutions that they successfully argue share some of the same foundational values (e.g., public interest). Importantly, only actors from “appropriate” alternative institutions are likely to be successful in these endeavors. It is unlikely that any council of clergy from a religious denomination would have succeeded in extending their institutional reach into financial markets.

This raises interesting questions about the ways in which we study institutional theory, which often bounds or defines the institution by industry or sector. Institutional theory is traditionally classified as an “Open Systems” approach to Organization Studies (Scott, 2003), meaning that boundaries between organizations are permeable, thus field level forces outside the organization (e.g., an industry focus on

quality) affect action within the organization (e.g., adopting ISO 9000). Yet, at the field level, institutional research frequently bounds the institution studied by definition (e.g., the health care industry). Yet, this study suggests boundaries between institutions themselves are permeable, and that imposing predefined boundaries may inhibit our ability to fully understand institutional forces. Network theory (Borgatti, Mehra, Brass, & Labianca, 2009) and Complexity Theory (Brown & Eisenhardt, 1997) may be useful in understanding the inter-institutional effects suggested by this study.

Likewise, it demonstrates that the multifaceted aspects of institutions are also not discrete components; the cultural/cognitive, normative and regulatory aspects of institutions are, at least at times, highly integrated. The institutional guardians in this study grounded every aspect of their activities, from their self-authorizations to their problematizations of the institutional arrangements to their proposed actions in the normative aspects of the institutions, but conveyed these through cultural accounts. Their actions belie the artificial separation of these aspects evident in much institutional research (Mizruchi & Fein, 1999) and implicit in the pillar metaphor. Even recent work that suggested institutional work may constitute combinations of maintenance, disruption, and creation simultaneously, still promotes a clear distinction between, at least, the cultural/cognitive and the regulatory and normative aspects of institutions (Zilber, 2009). However, the guardians' dependence on cultural resources in advancing their work, suggests they were constantly accessing and deploying all three aspects of the institutional context.

My final contribution, which extends beyond institutional theory, raises new and intriguing questions about what constitutes change or persistence in social systems. While there has been considerable attention paid to "change" in the study of organization, there has been less explicit attention paid to persistence, at least to persistence as something that is "achieved." In this sense, perspectives consistent with the construct of change (including innovation and creativity) occupy a privileged position in our scholarship. The actions of those who work to preserve valued aspects of existing social systems are often relegated to forms of "resistance to change" with which the entrepreneur or manager must do

battle and overcome. Change, its variants, and its derivatives are often equated with progress and therefore valued and worthy of study. This study shows that persistence may also be valued and achieved, and that persistence over the long term, may require restorative or corrective action in the short term. As such, agents may change specific social practices in their efforts to preserve a valued social system in which they are embedded. This raises interesting questions about how we understand and classify organizational, as well as institutional, change.

Limitations

As with all research, especially research grounded in the analysis of a single case, the research presented here has certain limitations. The most significant of these relate to the empirical setting itself. Both temporally and contextually, the data from this study are grounded in a particularly specific, and potentially extreme and unique context. To a certain extent, the recent financial crisis and numerous parallels drawn with the Great Depression and even the Pecora Commission itself, raise our awareness that historical settings can serve to inform our current understanding of social systems. (I reflect on exactly this point in the epilogue which follows this chapter.)

Perhaps more importantly, the empirical context is specifically highly political and perhaps more pervasive and visible than most institutional settings. These factors may have biased the actions I studied. Actors may have been more restrained because of the visibility, or engaged in more ceremonial acts because of the politically charged nature of the context. While every effort was taken to detect and account for any such bias, it is impossible to accurately reconstruct the internalized thoughts of actors even in present-day lab experiments, let alone those from three-quarters of a century past.

Another limitation of this study, as with all single-case studies, is that the case itself was not selected at random. I deliberately chose this setting because it exhibited, at least in part, the phenomenon I was interested in: stability of an institution that faced a significant crisis. Although I was interested in how actors in that setting worked to support institutional persistence, I included a range of actors

expecting to contrast actors and actions promoting change with those working to promote persistence. Instead, I found variance in the degree of change or persistence actors promoted, and variance in the aspects of the institution they fought to preserve. Comparative case studies, across multiple institutional contexts that have come under threat, evidencing varying degrees of change and persistence, would provide a more robust research design to test and elaborate the model and constructs proposed here.

Finally, my analysis is grounded primarily in the legislative history of the Securities and Exchange Act as passed in 1934. Although it includes comprehensive transcripts of floor debates and committee hearings and testimony, they are retrospectively compiled to provide the rationale for the act as enacted. While this represents the “dominant” or “victorious” cultural account, it potentially marginalizes other perspectives. For example, while I included letters from constituents read into the Congressional Record in my analysis, I have no access to any letters received which were not read in. Analysis of response to a current institutional crisis would allow for access to data and processes not filtered by time and other agents, at least in theory. The current crisis facing the Episcopal Church might offer exactly such a research setting for someone with appropriate access.

In this dissertation I have analyzed the creation of the Securities and Exchange Commission in 1934 to expand our understanding of how actors employ agency in the service of the persistence of social systems. While this concludes my analysis, in the next section, I offer an epilogue in which I reflect on the parallels between the market conditions that led to the creation of the SEC and those precipitated by the mortgage meltdown of 2008. My goal is to leverage this study to offer insights and interpretations of our current situation, and reflect on how we can learn from the past, or at least from not having yet learned from it.

EPILOGUE: THE PERSISTENCE OF INSTITUTIONS

“It’s hard to keep the line between the past and the present.”

(The younger Edith Bouvier Beale, Grey Gardens)

The setting of this dissertation is paradoxically timely. Although the Securities and Exchange Commission remains with us today, arguably an institution in its own right at this point, an analysis of the thought processes, proposals, and intentions of pre-World War II political leaders, financial tycoons, and ordinary citizens should, by all accounts, be at most an interesting anachronism – a glimpse into the past whence we came. And yet, it is not. And that simple fact, perhaps better than any rigorous scholarly study, captures the incredible power of institutions.

As I immersed myself in the data and empirical setting which form the basis for this dissertation, the Presidential election of 2008 ensued. One day, with the news droning in the background, I heard someone reading what I thought was a quote from my data.

“Our economy, I think, still, the fundamentals of our economy are strong.”

As I listened to the quote, two things nagged at me. One, the quote is not complete. Hoover, I knew (as only a Ph.D. student immersed in his or her dissertation data can know), referred explicitly to the production and distribution of commodities. Two, the voice was that of Republican nominee John McCain. Of all the Republic Presidents before him, why would he quote Herbert Hoover, especially as we teetered on the edge of financial crisis? Reagan, Lincoln, and Teddy Roosevelt all found ways to inspire confidence in time of peril, surely any one of them would have been a better choice.

As it turns out, I had made an erroneous assumption: John McCain was not misquoting Herbert Hoover; he was, for all intents and purposes, channeling him. More accurately, he was speaking from and breathing life into the Laissez-Faire economic philosophy that precipitated both financial crises. An arguably institutionalized philosophy – long-held and very resilient – that states at any given point in time, the current instantiation of the capital market in the United States is, in the words of Mark Suchman (1995), “desirable, proper, or appropriate within some socially constructed system of norms, values,

beliefs, and definitions.” This dissertation shows that this perspective – the taken-for-granted legitimacy of U.S. capital market activities writ large – permeates all aspects of our society, at least to some extent – and even constrains those who might otherwise work to change it, even today.

As I would explain the subject of my dissertation to others, as Ph.D. candidates are prone to do, I invariably encountered two responses. The first was always about how timely it was, with most people assuming I decided on my setting AFTER the mortgage meltdown. The second was that, once the dust settled, the Obama administration and Democratic Congress would set about enacting serious financial reform. My response, out loud, was always “Let’s hope so.” But, being familiar with my data, to myself, I always thought: “But, don’t hold your breath.”

Then, on Sunday, May 23, 2010, The *New York Times* reported:

The financial reform legislation making its way through Congress has Wall Street executives privately relieved that the bill does not do more to fundamentally change how the industry does business. [Eric Dash & Nelson D. Schwarz, New York Times, May 23, 2010]

How can it be that, in the wake of the Great Recession and the Troubled Asset Relief Program (TARP), as in the wake of the Crash of 1929 and the Pecora Commission, institutional change in this arena is, at best, incremental and at worst, merely symbolic. Since the Roosevelt administration enacted a wide array of New Deal legislation, even establishing Social Security, and the Obama administration was able to push through significant, if not radical, health care reform legislation, it would seem unreasonable to assume they lack the political skill and clout to effect significant change.

I believe the answer lies in the nature of institutions and institutional forces and, particularly, how strongly we tie our national identity to our market economy. There is a structural advantage for those working to preserve an institution – they have the weight of history and institutional power in their favor. Thus, in 1934, Congress eventually defers to Wall Street Executive’s expertise, for example, in terms of the role of short sales. While the formal report of the Pecora Commission calls for the elimination of short sales, the legislation does not. And so, in 2010 we find short sales not only persist, but the concept

has evolved into a variety of sophisticated, opaque, securitized instruments (e.g., Credit Default Swaps), all designed to bet *against* the success of something the bettor need have no personal stake in. And it was these inscrutable instruments that lay at the heart of the mortgage meltdown and financial crisis of 2008.

Why was Wall Street able to so limit regulatory involvement in the markets and preserve this type of operation, both in 2010 and three-quarters of a century earlier? Alan Hirschman, perhaps best known for his Exit, Voice, Loyalty framework, writes in the *The Rhetoric of Reaction* (1991), that through history and across contexts, those working against forces of change (or progress) draw on arguments of *Perversity* (i.e., messing with the system will actually create the opposite effect from what is desired), *Futility* (i.e., change is impossible, so attempts at change are a waste of time), and *Jeopardy* (any change will lead to unanticipated and undesirable outcomes). Certainly some of these arguments are evident in the Wall Street actors' speech events, but my findings here suggest a more insidious form of conservative bias: Institutions, even those experiencing crisis, are born out of some prior correlation of values and power, and people embedded in those institutional contexts are loathe to abandon those values. I submit that this is *why* the particular arguments of *perversity* and *jeopardy* actually work – people are predisposed to value at least some aspect of the institution and these specific arguments resonate, even with agents of change, who must either disprove the arguments or abandon traditionally-accepted values to promote change.

If this is true, and my research has led me to believe it is, it raises two important questions about institutional change. 1) How can we overcome this bias which favors conservatism? and 2) Should we try to do so? Neither has an obvious or easy answer. To investigate the first, we might contrast the case of financial regulation with the establishment social security (in the 1930s) or health care reform (in present day). In both cases, it is arguably a greater degree of humility that serves as a foundation for effecting real change. Specifically, in the recent battle over health care reform, cries of “we have the best health care system in the world” rang hollow in light of evidence showing dramatically higher health care

expenditures and significantly shorter life spans for Americans than most, if not every, other industrialized countries. Health care reform may well have succeeded (and gained higher *post hoc* acceptance) because advocates were able to show the system was not, in fact, supporting underlying values (not only long life, but also, and perhaps more importantly for some, return on investment, as well as national pride and excellence).

No such clear deficiency exists in the case of financial reform. Politicians and news professionals dutifully reported the lessons Japanese had learned in a similar crisis, but the message never crystallized in to how our values could be better served with a different system; in fact, it never explicitly linked the system to underlying values. And perhaps this is because we still have not identified them. The stability and security of financial markets, and protecting the public interest, it seems, may not actually be valued in the United States, at least not as much as the upside potential of the Rags-To-Riches stories of Horatio Alger, or the entrepreneurial spirit. In the Broadway musical 1776, one of the delegates to the Second Continental Congress suggests: “Most people would rather protect the possibility of becoming rich than accept the reality of being poor.” That sentiment may well explain why we accept a market system which not allows people to get rich by selling stock they do not actually own, but also legitimates the securitization of other people’s misfortune. A handful of people made a lot of money on the market in recent years, not despite the mortgage melt down and credit crunch, but precisely **because of it**. And, somehow, this seems to be acceptable.

We accept that our market economy is a zero-sum game –e.g., every dollar Pepsi makes is a dollar Coke did not. So, since so many people lost in recent years, it makes intuitive sense that some must have also won. But if our market economy is truly supposed to support the public interest and the general welfare, a win-lose metaphor is not, and cannot be, the right or best way to think of it. In May 2010, Apple overtook Microsoft as the technology company with the highest market capitalization in the United States. Yet, Apple has not ousted Windows from dominance on the desktop; they did not “win”

the desktop battle. Instead, they have succeeded by growing the pie – finding new products and new ways to create value for people and literally creating new industries, as they did with the iPod, which adds value to the way people engage with music.

So, how can we realize **real** reform of the financial markets? We need to make explicit the values from which the institution draws its power, and then ensure the institutional arrangements are in line with those values. If, the underlying values are a secure national economy that works in service of the public interest and the general welfare, a system steeped entirely in the win-lose metaphor is simply incompatible with that – just as a health care system that costs more yet yields lower life expectancy is incompatible with the American values of national excellence (and values of good health and long life, too). But that is a big if, and it raises the next question: should we do so?

Some, I suspect, would argue that our very national excellence is a direct product of the competitive market that is built upon a win-lose metaphor, promoting a financial market version of evolutionary survival of the fittest. And that if, as I submit, we must accept the public interest and general welfare as the guiding values of our economy in order to achieve real financial reform, we should simply not do so. Doing so, they would say, is to abandon capitalism – the “general welfare” after all, is a “communal” concept, founding fathers notwithstanding.

But, I reject this claim. What defines the nation? When I think of the nation at its best, I think of our role in World War II and of our scientific and technical advances borne in the space program which laid the foundation for the Strategic Defense Initiative (SDI) that would help end the Cold War without a nuclear confrontation. These were times when the nation came together and acted towards a concerted public interest, all without abandoning the market economy. President Franklin Roosevelt is famously quoted as saying of U.S. involvement in World War II, “I don’t want to see a single war millionaire created in the United States as a result of this disaster” and no one bet in the market against the companies retooled to make planes and ships. Similarly, both the Space Program and SDI benefited the economy in

many ways, but people or companies did not profit by betting against them. If America at its best can simultaneously promote the general welfare and maintain a market economy, might we be able to do it all the time, not just in times of world conflict or ideological war?

Here again, I return to Apple. Apple did not abandon a profit motive, but they are not more profitable than Microsoft. They did not “win” the profit game; instead, they found a way to prosper independent of, and as it turns out, in addition to Microsoft’s prosperity. They did not “bet against” Microsoft in the ways Credit Default Swaps, and those who created and bought them, bet against people keeping their houses. Apple focused on creating value, and let Microsoft create value, and let Google create value.

Using another example, when Toshiba abandoned the HD-DVD format, those who produced BluRay players and content, for example Sony, profited – but they profited from increased sales of the products they created – not just because they anticipated Toshiba’s failure. Others, those who sold Toshiba stock short – or who “bet against” Toshiba, profited just from their misfortune, reflected in the resultant drop in Toshiba’s stock price. A market system that legitimates, even valorizes, profiting not from your own products or services, but simply on the misfortunes promotes Schadenfreude and, to me is somehow anti-social in the largest sense of the word, or at least uncivilized. Unlike those who made money from betting “for” Sony, who then had incentives for seeing that organization succeed, short selling Toshiba created incentives for seeing that organization fail. Keeping organizations (and the people who depend on them) afloat is difficult enough without creating an incentive system that promotes their failure. I submit that both the Great Depression and the Great Recession have in their origins, at least in part, a series of individual failures which were incentivized by a market system that legitimizes betting against others’ success. Whether those incentives actually translate into actions that precipitated or even just accelerated their failures, is an interesting question for further research. Since we know incentive systems are often better linked to actual behaviors than desired outcomes (Kerr, 1975), I suspect

the answer is yes. So, given the incredible hardship faced by or still facing, American citizens as a consequence of both of these crises, I would therefore have to answer *yes* to the second question – we should try to change the institutions that comprise the financial market, even if it means reassessing the underlying values and asserting the primacy of the “General Welfare” over the competitive “win-lose” metaphor that legitimates Schadenfreude-based instruments and profits.

REFERENCES

- Angus, L. B. 1993. Masculinity and women teachers at Christian Brothers College. Organization Studies, 14(2): 235-260.
- Bealing, J., William E., Dirsmith, M. W., & Fogarty, T. 1996. Early regulatory actions by the SEC: An institutional theory perspective on the dramaturgy of political exchnages. Accounting, Organizations and Society, 21(4): 22.
- Berger, P. L. & Luckmann, T. 1966. The Social Construction of Reality: A Treatise in the Sociology of Knowledge. New York: Anchor.
- Borgatti, S. P., Mehra, A., Brass, D., & Labianca, G. 2009. Network analysis in the social sciences. Science, 323(5916): 892-895.
- Braganza, A. & Desouza, K. C. 2006. Implementing section 404 of the Sarbanes Oxley Act: Recommendations for new information systems organizaitons. Communications of the AIS, 2006(18): 24.
- Brandeis, L. D. 1955. Other People's Money and How the Bankers Use It. Boston: Beford Books of St. Martin's Press.
- Brown, S. L. & Eisenhardt, K. 1997. The art of continuous change: Linking complexity theory and time-paced evolution in relentlessly shifting organizations. Administrative Science Quarterly, 42(1): 1-34.
- Clemens, E. S. 1993. Organizational Repertoires and Institutional Change: Women's Groups and the Transformation of U.S. Politics, 1890-1920. American Journal of Sociology, 98(4): 755-798.
- Clemens, E. S. & Cook, J. M. 1999. Politics and institutionalism: Explaining durability and change. Annual Review of Sociology, 25(1): 441-467.
- Corley, K. G. & Gioia, D. 2004. Identity ambiguity and change in the wake of a corporate spin-off. Administrative Science Quarterly, 49(2): 173-208.

- Creed, W. E. D., DeJordy, R., & Lok, J. 2010. Becoming the change: Resolving institutional contradiction through identity work. Academy of Management Journal.
- Dacin, T. M., Goldstein, J., & Scott, W. R. 2002. Institutional theory and institutional change: Introduction to the special research forum. Academy of Management Journal, 45(1): 45-56.
- Davis, G. F., Diekmann, K. A., & Tinsley, C. H. 1994. The decline and fall of the conglomerate firm in the 1980s: The deinstitutionalization of an organizational form. American Sociological Review, 59(4): 547-570.
- Deephouse, D. L. 1996. Does isomorphism legitimate? Academy of Management Journal, 39(4): 1024-1039.
- DeJordy, R. & Almond, B. A. 2008. Organization Theory. In J. Darity, William A. (Ed.), International Encyclopedia of the Social Sciences, 2nd ed., Vol. 6: 68-70. Detroit: Macmillan Reference.
- Dent, E. B. & Goldberg, S. G. 1999. Challenging 'resistance to change'. Journal of Applied Behavioral Science, 35(1): 17.
- DiMaggio, P. 1988. Interest and agency in institutional theory. In L. G. Zucker (Ed.), Institutional Patterns and Organizations: Culture and Environment. Cambridge, MA: Ballinger Publishing.
- DiMaggio, P. J. & Powell, W. W. 1983. The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. American Sociological Review, 48(2): 147-160.
- DiMaggio, P. J. & Powell, W. W. 1991. Introduction. In P. J. DiMaggio & W. W. Powell (Eds.), The New Institutionalism in Organizational Analysis: 1-38. Chicago: University of Chicago Press.
- Ellenberger, J. S. & Mahar, E. P. (Eds.). 1973. Legislative History: Securities Exchange Act of 1934. South Hackensack, NJ: Fred B. Rothman & Co.
- Emirbayer, M. & Mische, A. 1998. What is Agency? American Journal of Sociology, 103(4): 962-1023.
- Fligstein, N. 1991. The structural transformation of American industry: An institutional account of the causes of diversification in the largest firms, 1919-1979. In P. J. DiMaggio & W. W. Powell (Eds.), The new institutionalism in organizational analysis. Chicago: University of Chicago Press.

- Fligstein, N. 1997. Social skill and institutional theory. American Behavioral Scientist, 40(4): 397-395.
- Fligstein, N. 2001. The Architecture of Markets: An Economic Sociology of Twenty-First Century Capitalist Societies. Princeton: Princeton University Press.
- Fox-Wolfgramm, S. J., Boal, K. B., & Hunt, J. G. 1998. Organizational adaptation to institutional change: A comparative study of first-order change in prospector and defender banks. Administrative Science Quarterly, 43(1): 87-126.
- Friedland, R. & Alford, R. R. 1991. Bringing society back in: Symbols, practices, and institutional contradiction. In W. W. Powell & P. DiMaggio (Eds.), The New Institutionalism in Organizational Analysis: 232-263. Chicago: University of Chicago Press.
- Gargulio, M. 1993. Two-Step leverage: Managing constraint in organizational politics. Administrative Science Quarterly, 38(1): 1-19.
- Garud, R., Jain, S., & Kumaraswamy, A. 2002. Institutional entrepreneurship in the sponsorship of common technological standards: The case of Sun Microsystems and Java. Academy of Management Journal, 45(1): 196-214.
- Glaser, B. G. & Strauss, A. 1967. The discovery of grounded theory: Strategies for qualitative research. New York: Aldine.
- Glynn, M. A. & Abzug, R. 2002. Institutionalizing identity: Symbolic isomorphism and organizational names. Academy of Management Journal, 45: 267-280.
- Glynn, M. A. & Navis, C. Forthcoming. Entrepreneurship, institutional emergence and organizational leadership: Tuning into "The Next Big Thing" in satellite radio. Research in the Sociology of Work, 20.
- Goodwin, C. 1996. Professional vision. American Anthropologist, 96(3): 606.
- Greenwood, R. & Suddaby, R. 2006. Institutional entrepreneurship in mature fields: The big five accounting firms. Academy of Management Journal, 49(1): 27-48.
- Healy, R. E. 1938. The next step in accounting. The Accounting Review, 13(1): 9.

- Hirsch, P. M. 1997. Sociology without social structure: Neoinstitutional theory meets the brave new world. American Journal of Sociology, 102(6): 1702-1725.
- Hirsch, P. M. & Lounsbury, M. 1997. Ending the family quarrel: Toward a reconciliation of "old" and "new" institutionalisms. American Behavioral Scientist, 40(4): 13.
- Hirsch, P. M. & Bermiss, Y. S. 2009. Institutional "dirty" work: Preserving institutions through strategic decoupling. In T. B. Lawrence & R. Suddaby & B. Leca (Eds.), Institutional Work: Actors and Agency in Institutional Studies of Organizations: 262-283. Cambridge, UK: Cambridge University Press.
- Hirschman, A. O. 1991. The Rhetoric of Reaction: Perversity, Futility, Jeopardy. Cambridge: Harvard University Press.
- Hoffman, A. J. 1999. Institutional evolution and change: Environmentalism and the U.S. chemical industry. Academy of Management Journal, 42(4): 351-371.
- Holm, P. 1995. The dynamics of institutionalization: Transformation processes in Norwegian fisheries. Administrative Science Quarterly, 40(3): 398-422.
- Hughes, E. C. 1936. The ecological aspect of institutions. American Sociological Review, 1(2): 10.
- Hughes, E. C. 1939. Institutions. In R. R. Park (Ed.), An outline of the principles of sociology. New York: Barnes & Noble.
- Karmel, R. S. 1982. Regulation by Prosecution: The Securities and Exchange Commission Versus Corporate America. New York: Simon and Schuster.
- Kerr, S. 1975. On the folly of rewarding A, while hoping for B. Academy of Management Journal, 18(4): 769-783.
- Koslow, P. 1990. The Securities and Exchange Commission. New York: Chelsea House Publishers.
- Kraatz, M. S. & Moore, J. H. 2002. Executive migration and institutional change. Academy of Management Journal, 45(1): 120-143.

- Kraatz, M. S. 2009. Leadership as institutional work: A bridge to the other side. In T. B. Lawrence & R. Suddaby & B. Leca (Eds.), Institutional Work: Actors and Agency in Institutional Studies of Organizations: 59-91. Cambridge, UK: Cambridge University Press.
- Lawrence, T. B. 1999. Institutional Strategy. Journal of Management, 25(2): 161-187.
- Lawrence, T. B. & Suddaby, R. 2006. Institutions and institutional work. In S. R. Clegg & C. Hardy & T. B. Lawrence & W. R. Nord (Eds.), The Sage Handbook of Organization Studies, 2nd ed.: 215-254. London: Sage.
- Leblebici, H., Salancik, G. R., Copay, A., & King, T. 1991. Institutional change and the transformation of interorganizational fields: An organizational history of the U.S. radio broadcast industry. Administrative Science Quarterly, 36(3): 333-363.
- Lee, T. W. 1999. Using Qualitative Methods in Organizational Research. Thousand Oaks, CA.
- Lounsbury, M. & Glynn, M. A. 2001. Cultural entrepreneurship: Stories, legitimacy, and the acquisition of resources. Strategic Management Journal, 22(6/7): 20.
- Maguire, S. & Hardy, C. 2009. Discourse and deinstitutionalization: The decline of DDT. Academy of Management Journal, 52(1): Forthcoming.
- Martens, M. L., Jennings, J. R., & Jennings, P. D. 2007. Do the stories they tell get them the money they need? The role of entrepreneurial narratives in resource acquisition. Academy of Management Journal, 50(5): 1107-1132.
- Meltzer, A. H. 2001. Financial Collapse, 1933. Atlantic Economic Journal, 29(1): 19.
- Meyer, J. W. & Rowan, B. 1977. Institutionalized Organizations: Formal Structure as Myth and Ceremony. American Journal of Sociology, 83(2): 340-363.
- Mezias, S. J. & Scarselletta, M. 1994. Resolving financial reporting problems: An institutional analysis of the process. Administrative Science Quarterly, 39(4): 25.
- Miles, M. B. & Huberman, A. M. 1994. Qualitative Data Analysis: An Expanded Sourcebook (2nd ed.). Thousand Oaks, CA: Sage.

- Misangyi, V. F., Weaver, G. R., & Elms, H. 2008. Ending corruption: The interplay among institutional logics, resources, and institutional entrepreneurs. Academy of Management Review, 33(3): 750-770.
- Mizruchi, M. S. & Fein, L. C. 1999. The social construction of organizational knowledge: A study of the uses of coercive, mimetic, and normative isomorphism. Administrative Science Quarterly, 55(4): 653-683.
- Oliver, C. 1991. Strategic responses to institutional processes. Academy of Management Review, 16(1): 145-179.
- Oliver, C. 1992. The antecedents of deinstitutionalization. Organization Studies, 13(4): 563-588.
- Pecora, F. 1939. Wall Street under oath: The story of our modern money changers. New York: Simon and Schuster.
- Phillips, N., Lawrence, T. B., & Hardy, C. 2004. Discourse and institutions. Academy of Management Review, 29(4): 18.
- Phillips, S. M. & Zecher, J. R. 1981. The SEC and the public interest. Cambridge: MIT Press.
- Pointer, L. G. & Schroeder, R. G. 1986. An Introduction to the Securities and Exchange Commission. Plano: TX: Business Publications, Inc.
- Powell, W. W. & Colyvas, J. A. 2008. Microfoundations of Institutional Theory. In R. Greenwood & C. Oliver & K. Sahlin & R. Suddaby (Eds.), The SAGE Handbook of Organizational Institutionalism: 276-298. Los Angeles: SAGE.
- Pratt, M. 2008. Fitting oval pegs into square holes: Tensions in evaluating and publishing qualitative research in top-tier North American journals Organizational Research Methods, 11(3): 481-509.
- Pratt, M. G., Rockmann, K. W., & Kaufmann, J. B. 2006. Constructing professional identity: The role of work and identity learning cycles in the customization of identity among medical residents. Academy of Management Journal, 49(2): 28.

- Rao, H. 1998. Caveat Emptor: The construction of nonprofit consumer watchdog organizations. American Journal of Sociology, 103(4): 50.
- Reay, T., Golden-Biddle, K., & Germann, K. 2006. Legitimizing a new role: Small wins and microprocesses of change. Academy of Management Journal, 49(5): 977-998.
- Rubstov, A., DeJordy, R., Glynn, M. A., & Zald, M. 2010. The social construction of causality: The effects of institutional myths on financial regulation, Research in the Sociology of Organizations.
- Schwarzkopf, D. L. & Miller, H. M. 2005. Early evidence of how Sarbanes-Oxley implementation affects individuals and their workplace relationships. Business and Society Review, 110(1): 25.
- Scott, W. R. 2001. Institutions and Organizations (2nd ed.). Thousand Oaks, CA: Sage.
- Scott, W. R. 2003. Organizations: Rational, Natural, and Open Systems. Upper Saddle River, NJ: Prentice Hall.
- Scott, W. R. 2005. Institutional theory: Contributing to a theoretical research program. In K. G. Smith & M. A. Hitt (Eds.), Great Minds in Management: 460-484. New York: Oxford University Press.
- Scott, W. R. 2008. Institutions and Organizations: Ideas and Interests (3rd ed.). Los Angeles: Sage.
- Seligman, J. 1982. The Transformation of Wall Street: A history of the securities and exchange commission and modern corporate finance. Boston: Houghton Mifflin.
- Selznick, P. 1948. TVA and the grass roots: A study in the sociology of formal organization. Berkeley: University of California Press.
- Selznick, P. 1957. Leadership in Administration. New York: Harper & Row.
- Seo, M.-G. & Creed, W. E. D. 2002. Institutional contradictions, praxis, and institutional change: A dialectical perspective. Academy of Management Review, 27(2): 222-247.
- Sewell, J., William H. 2002. A theory of structure: Duality, agency, and transformation. In L. Spillman (Ed.), Cultural Sociology: 324-329. Malden, MA: Blackwell.

- Stinchcombe, A. L. 1965. Social structure and organizations. In J. G. March (Ed.), Handbook of Organizations: 142-169. Chicago: Rand McNally.
- Stinchcombe, A. L. 1968. Constructing Social Theories. Chicago: University of Chicago Press.
- Stinchcombe, A. L. 1997. On the virtues of the old institutionalism. Annual Review of Sociology, 23(1): 1-18.
- Strauss, A. & Corbin, J. 1998. Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory. Thousand Oaks, CA: Sage.
- Suddaby, R. & Greenwood, R. 2005. Rhetorical strategies of legitimacy. Administrative Science Quarterly, 50(1): 35-57.
- Suddaby, R. 2006. From the editors: What grounded theory is not. Academy of Management Journal, 49(4): 633-642.
- Thornton, P. H., Jones, C., & Kury, K. 2005. Institutional logics and institutional change in organizations: Transformation in accounting, architecture, and publishing. Research in the Sociology of Organizations, 23: 46.
- Trank, C. Q. & Washington, M. 2009. Maintaining an institution in a contested organizational field: The work of the AACSB and its constituents. In T. B. Lawrence & R. Suddaby & B. Leca (Eds.), Institutional Work: Actors and Agency in Institutional Studies of Organizations: 236-261. Cambridge, UK: Cambridge University Press.
- Vaughn, D. 1992. Theory elaboration: The heuristics of case elaboration. In C. Ragin & H. Becker (Eds.), What is a case? Exploring the foundations of social inquiry. New York: Cambridge University Press.
- Weber, K. & Glynn, M. A. 2006. Making sense with institutions: Context, thought and action in Karl Weick's theory. Organization Studies, 27(11): 1639-1660.
- Weber, M. 1948. From Max Weber (H. H. G. C. W. Mills, Trans.). London: Routledge & Kegan Paul.
- Weick, K. E. 1995. Sensemaking in Organizations. Thousand Oaks, CA: Sage.

- Zilber, T. B. 2002. Institutionalization as an interplay between actions, meanings, and actors: The case of a rape crisis center in Israel. Academy of Management Journal, 45(1): 20.
- Zilber, T. B. 2006. The work of the symbolic in institutional processes: Translations of rational myths in Israeli Hi-Tech. Academy of Management Journal, 49(2): 23.
- Zilber, T. B. 2009. Institutional maintenance as narrative acts. In T. B. Lawrence & R. Suddaby & B. Leca (Eds.), Institutional Work: Actors and Agency in Institutions Studies of Organizations: 204-235. Cambridge, UK: Cambridge University Press.
- Zucker, L. G. 1977. The role of institutionalization in cultural persistence. American Sociological Review, 42(5): 726-743.

Appendix A: Key actors in events leading to and enacting the creation of the SEC

| Actor | Function/Role | Selected relevant data | Sample Data Items |
|--|---|--|---|
| FEDERAL & STATE GOVERNMENT (EXECUTIVE BRANCH) | | | |
| Franklin Roosevelt | Governor (NY) U.S. President | Partially campaigned on issue of securities reform & regulation. “It has been asserted that Roosevelt’s efforts were really directed at maintaining the <i>status quo</i> of governmental-business relations, even as recognized by Roosevelt sympathizers (e.g., Hardman, 1944, p23.)” (Bealing et al., 1996:324). Called for “Return to the ancient truth” in inaugural address. | Campaign speeches Inaugural Address Letters to Congress |
| Herbert Hoover | U.S. President | Elected US President in 1928 Campaigned on “Coolidge Prosperity” and economic policy Believed federal regulation of securities unconstitutional Preferred voluntary partnership with Businesses and Wall Street | Campaign speeches Presidential Addresses |
| Andrew Mellon | Secretary of Treasury | Strongest & most consistent supporter of Laissez-Faire economic policy | None in primary data. |
| WWI Industrial Commission | Responsible for preparing industry for WWI. | Required unprecedented disclosure of financial information. Proposed disclosure of all facts potentially value to the public. Supported legal liability for promoters of fraudulent issues | None directly in primary data, but referenced by some items. |
| WWI Capital Issues Committee | Established to manage national finances in support of the war effort. | Lacked enforcement capabilities to ensure compliance Dissolved after WWI, but recommended establishment of regulation | None directly in primary data, but referenced by some items. |
| Federal Trade Commission | Executive agency charged with business oversight. | Established in 1914 to ensure fair consumer practices. Primarily an anti-trust agency. SE33 commissions it to oversee the disclosure provisions of the so-called “truth-in-securities” act. | Empower to enact SA33. FTC Commissioner James Landis active in forming SEC. |
| FEDERAL & STATE GOVERNMENT (LEGISLATIVE BRANCH) | | | |
| Congress | Federal Legislation | Responsible for enacting SE33 & SEA34 Two particularly important committees are: Senate Committee on Banking and Currency (SCBC) House Committee on Banking and Currency (HCBC) Additionally, earlier attempts at securities regulation introduced by: Congressman Edward Taylor (CO) in 1919 Congressman Andrew Volstead (MN) in 1919 Congressman Edward Denison (IL) in 1922 And at least 16 others in early 1930s | Congressional reports. Various bills and Acts resulting in SE33 & SEA34. Congressional hearing testimony. |

| | | | |
|---|--|--|---|
| States | State regulation | Individual states pass securities laws. Collectively called “Blue Sky” laws, they focused on new issues Federal Courts subsequently found all but one unconstitutional US Supreme Courts upholds right of states to regulate in-state sales; however, in-state restriction makes them very ineffective | None directly in primary data, but referenced by some items. |
| Carter Glass | Representative & Senator from Virginia. | “Father” of the Federal Reserve System Outspoken critic of Hoover administration securities policies | Speeches & Debate on Floor justifying his positions. |
| Duncan Fletcher | Senator from Florida. | Head of Senate Banking and Currency Committee (SBCC) starting in 1933. Introduced SBCC legislation into the Senate. | Speeches & Debate on Floor justifying bills introduced on behalf of the SBCC. |
| KEY NON-GOVERNMENT PERSONNEL | | | |
| Ferdinand Pecora | Chief Counsel for Senate Committee Hearings. | Primary author of legislation eventually adopted as SEA34 Appointed one of the first SEC Commissioners According to J. Seligman, “In spite of the severity of the stock market crash, effective securities legislation might not have been enacted had Pecora’s revelations not galvanized broad public support for direct federal regulation of stock markets.” (p.2) A Theodore Roosevelt Republican, he joined the democratic party because he was impressed with Woodrow Wilson’s policies. | Activity in Senate hearings. Authored of portions of SBCC reports. |
| Joseph Kennedy | Appointed first commissioner of SEC. | Considered friendly to interests of business and Wall Street Participated in Libby-Owens-Ford stock pool | None in primary data. |
| William O Douglas | Yale Law professor | SEC Commissioner (1934-1937) & Chair (1937-1939) Early critic of limited scope of SE33. | None in primary data. |
| PROFESSIONS & PROFESSIONAL ORGANIZATIONS | | | |
| Investment Bankers Association | Professional association for investment bankers. | Established goals of: Resisting undesired regulation Promote professional status and legitimacy Protect “fair” profits Opposed securities control & full disclosure Advocated general fraud laws Apparent self-interest renders it relatively ineffective | Reports and legal briefs submitted to Congressional Committees. |
| Business Community & Accounting Profession | Lobbies for business and accounting profession. | Lobbied against disclosure requirements with cost-benefit logic | None directly in primary data, but referenced by some items. |

| WALL STREET ORGANIZATIONS & ACTORS | | | |
|--------------------------------------|---|---|--|
| New York Stock Exchange | Largest of state-based exchanges. | Focus of the Pecora Commission's investigations and SE33 & SEA34. | |
| Richard Whitney | President of NYSE | Continued proponent of exchange self-regulation Proposed exchanges appoint SEC commissioners | |
| National City Bank (now Citibank) | Investment bank that comes under investigation. | Created/owned National City Company Became largest securities issuing entity in the world Sold more than \$650 shares in the bank, most of that value was lost in the 1929 crash. | |
| Charles E. Mitchell | President of National City Bank. | Investigated by Pecora Commission. Arrested for tax evasion in 1933. Found innocent of criminal charges, but lost a \$1M civil suit settlement to the US Government Representative Carter Glass said of him in 1929: "Mitchell more than any 50 men is responsible for this stock crash" | |

Appendix B: A timeline of events relating to securities regulation

| Year | Month/Season | Activity |
|--------------|----------------|--|
| 1850s – 1917 | | States, beginning with Massachusetts, enact “Blue Sky Laws” which are initially ruled unconstitutional by Federal Courts. These laws are generally aimed at new securities issues, giving them the right to refuse issuance if they find the securities questionable or promise the “Blue Sky” Federal courts rule all but one of these unconstitutional due to potential interference with inter-state commerce and ill-defined licensure requirements. |
| 1890 | | Passage of Sherman Anti-Trust Act exerts federal legislative power over business ownership and structure. The act is largely unspecified and is shaped mostly in judicial rulings. |
| 1912 | May | Pujo committee established to investigate Wall Street cabal, precipitating the 16 th Amendment to the US Constitution, the Clayton Anti-Trust Act, and the Federal Reserve Act |
| 1913 | | Rep. Carter Glass asked by President Woodrow Wilson to prepare legislation to reform banking, eventually supporting an independent Federal Reserve Board to directly control currency, in which he took a proprietary interest thereafter. |
| 1917 | | U.S. Supreme Court upholds rights of states to regulate securities issuance within state borders. While upholding the laws, the intra-state restriction renders them ineffectual. |
| | April | U.S. Joins World War I. To prepare the national economy for the war, both the Industrial Commission (CI) and the Capital Issues Committee require financial disclosure in the business sector. This represented the earliest federal initiatives in the area of financial disclosure. |
| 1919 | | In the aftermath of WWI, the CIC is disbanded, but its final report recommends “federal supervision of securities issues, here undertaken for the first time, should be continued by some public agency ... to check the traffic in doubtful securities...” Bills introduced by Rep. Andrew Volstead and Rep. Edward Taylor to regulate securities. These, and particularly the Taylor bill, foreshadow the securities regulation of 1933 & 1934. The Taylor bill would have required registration (with the Treasury Department) of any stock issue for any company engaging in interstate commerce, and established legal liability for all persons signing any such registration shown to contain falsified information. Both bills fail, largely due to lobbying by the business community grounded, among other concerns, on their assessment that the cost of disclosure far exceeded the benefits. |
| 1920 – 1927 | | Stock values on NYSE double over the course of eight years. This roughly tracks the increase in economic production in the country. |
| 1922 | | Another bill introduced by Rep. Edward Denison to regulate securities exchange was defeated based on opposition from the companies that would have been regulated. |
| 1927 – 1928 | | Now Senator Carter Glass becomes vocal opponent of speculative stock practices. In 1927, he advocates a 5% tax on stocks held less than 60 days to discourage “stock market gamblers.” In 1928, he predicts that, if left unabated, “gambling in stocks and bonds, without regard to the need for money in legitimate industry ... the people of the United States may find it necessary to overhaul the whole conduct of the Federal Reserve system.” |
| 1928 | March - August | Stock prices on NYSE double again in this six month period. |
| | Summer/Fall | Then Secretary of Commerce Herbert Hoover, campaigning explicitly on extending the “Coolidge Prosperity” through continuation of the Laissez-Faire |

| | | |
|-------------|-----------------|---|
| | | economic policies, is elected 31 st President of the United States. |
| 1929 | February | Federal Reserve Board cautions members against borrowing for speculative loans. |
| | March | On 6 th , Hoover urges Federal Reserve Board to reduce credit for speculative purposes On 23 rd , Federal Reserve Board holds unprecedented Saturday meeting, but issues no statement. On 26 th , Federal Reserve Board silence reduces “speculative fever” and stock prices plummet on record volume of 8M shares. On 26 th , National City Bank Chairman Charles E. Mitchell defies FRB caution on speculative loans and borrows money from the New York Federal Reserve to prevent liquidation of margin loans. The Federal Reserve and Hoover back down. |
| | Spring & Summer | Speculation resurges. Share prices increase 25% and brokers’ loans reach a rate of \$400M/month. Senator Carter Glass charges that the Federal Reserve Board should have prevented National City Bank from borrowing for speculative loans in March. |
| | October | On 18 th , 19 th , and 21 st , each day saw major single day drops in stock values On 22 nd , slight recovery On 23 rd , another significant loss The New York Times Average fell over 10% (30 out of 291 points) in the six day period from 18 th – 23 rd . Investment banker pool purchases \$20-\$30M in securities to stabilize market on Thu 10/24. On 25 th , Hoover, trying to boost confidence in the economy issues statement saying “the fundamental business of the country, that is, production and distribution, is on a sound and prosperous basis.” On 10/28, NYSE experiences staggering record-breaking losses. On 10/29, NYT Average falls 24 points in single day. In the eight weeks since Labor Day, NYTA loses 111 points (36%), representing \$18 Billion. |
| | November | On 1 st , Senator Joseph T. Robinson issues statement to press citing that Coolidge, Mellon, and Hoover “contributed, by unduly and repeated optimistic statements to the creation of enthusiastic, if not frenzied adventures in stocks.” On 21 st , Hoover begins assembling leaders from industrial sector to urge them to maintain current levels of employment and wages. Mellon continues to support laissez-faire policy, suggesting the slump will liquidate itself and that it would “purge the rottenness out of the system... People will work harder, live a more moral life. Values will be adjusted and enterprising people will pick up the wreck from less competent people.” |
| 1929 - 1930 | December – May | By first week of January 1930, six members of congress proposed legislation aimed at regulating financial markets through disclosure, margin loans, or restrictions on short sales. Simultaneously, the stock market was moderately rebounding. By April it had regained about half of the losses in October and November of 1929, in what has been termed “the Little Bull Market.” Hoover claimed the government’s partnership with business restored public confidence in the system. The tentative tone in his December State of the Union address, in which he acquiesced that it might be desirable for Congress to revise some aspect of banking legislation, faded quickly, and by March he predicted that the worst effects of the crash on unemployment would be over by summer. On May 1 st , Hoover told the U.S. Chamber of Commerce “I am convinced we |

| | | |
|------|-----------|--|
| | | have passed the worst and with continued effort we shall rapidly recover.” |
| 1930 | June | Hoover signs Smoot-Hawley tariff bill -- Market begins another slump. Senator Carter Glass reiterates Robinson’s charge that Hoover’s undue optimism contributed to the crash, and introduces legislation “to prevent undue diversion of funds into speculative operations” and attacks the State Departments role in “approving” issues of foreign securities amidst publicity of foreign bonds in or nearing default. |
| | October | Hoover invites NYSE Chairman Richard Whitney to a “secret” dinner to consult on methods to curb “bear raids”. |
| | November | Campaigning largely against the now clearly false economic optimism of the Hoover administration, Democrats took control of the House and came within one vote of control of Senate after a decade of Republican control. |
| 1931 | | Hoover continues to push the NYSE to self-regulate, still citing lack of constitutional authority for federal regulation. |
| | May | NYSE calls for daily reporting on short sales amid publicity of bear raids. |
| | September | NYSE implements a temporary ban on short sales after the Bank of England suspends gold payments. |
| | October | Senate majority leader, James E. Watson, publicly warns Hoover that a Senate investigation into the stock market was virtually inevitable. On 16 th , Richard Whitney delivers radio address insisting short sales are “essential to an open market for securities.” |
| | December | Members of the 72 nd Congress, in partial response to Whitney’s address, introduce ten different bills to regulate securities exchange, most with a particular focus on short-selling. The language of these bills included imposing a 25% tax on all short-sale profits, declared that short sales “exert a vicious influence and produce abnormal and disturbing declines of prices that are not responsive to actual supply and demand” (both from Senator Arthur Capper), while Senator Smith W. Brookhart’s bill included provisions to imprison any person who sold stock short. On 18 th , Senate Hearings on foreign debt securities begin under the supervision of Senator Hiram Johnson. Of the \$6.3B in foreign bonds Americans had purchased since 1923, 90% of them had substantially depreciated (by as much as 93%), while the investment banks were making as much as 14% commission on these issues. The hearings reiterated Senator Carter Glass’s concern over the State Department’s role in “approving” foreign securities as often providing a veneer of legitimacy to bonds of otherwise clearly questionable value. By end of year, unemployment was at 25% and productivity and income was half its 1929 rate. Stock values were approximately a mere 20% of their high in 1929. |
| 1932 | January | Hoover meets with directors of NYSE and demands the exchange take immediate action against pool operators and bear raiders. |
| | February | Andrew Mellon resigns as Secretary of the Treasury. On 16 th , Hoover meets with Richard Whitney, threatening legislative regulatory action unless the exchange reformed itself. On 17 th , NYSE issues new rule that brokers obtain written permission from clients before lending shares to short-sellers. The rule is generally ceremonial, and does not materially affect short-selling activity. On 19 th , Hoover tells press “Exchanges ... should take adequate measures to protect investors from artificial depression of the price of securities for speculative profit. Individuals who use the facilities of the Exchange for such purposes are not contributing to recovery of the United States.” On 24 th , during testimony to House Judiciary Committee hearings on short- |

| | | |
|--|-------------|--|
| | | <p>selling, Richard Whitney states he does not believe the written-permissions rule (passed on the 17th) will hinder short-selling.</p> <p>Hoover calls Senators Frederick Walcott and Peter Norbeck, Chair of the SCBC, asking them to initiate an investigation of stock exchange practices.</p> <p>On 28th, Senator Walcott lobbied for a Senate resolution for the study of bear-raiding, which, limited in scope to not result in legislation, had little support.</p> |
| | March | <p>On 3rd, Republican Senators Norbeck, James P. Couzens, and John G. Townsend, as Senate Democrats, passed a resolution for “a thorough and complete investigation ... and recommendations for the remedial legislation”.</p> <p>On the 4th, the full Senate authorized the resolution and funded it with \$50,000. For next five weeks, during the President’s silence on the matter, the SCBC postponed the hearings while debating previous legislation.</p> |
| | April | <p>On 7th, the President invited Walcott to the White House after a surge in short sales the prior week and circulation of a rumor of a bear raid planned for the 9th.</p> <p>On 8th, an emergency hearing of SCBC issues subpoena for NYSE president Richard Whitney to appear the following Monday as the first witness at the stock exchange inquiry.</p> <p>Claude Branch, from Providence, RI, appointed temporary counsel for the hearings.</p> <p>On 11th, Hearings commence. SCBC characterized as disorganized and unprepared.</p> <p>On 12th, SBCS Chairman Norbert maneuvers the relatively passive Claude Branch out in favor of then-assistant William Gray, a Philadelphia trial attorney with more experience in cross-examination.</p> <p>On 18th, hearings resume with Gray as chief counsel.</p> <p>On 25th, Norbert reorganizes commission to exclude Hoover confidant Walcott. In response, Hoover distances himself from the hearings.</p> <p>On 27th, Rep. Fiorello La Guadia produces the first evidence of price manipulations in support of pools. After what is seen as the first positive results of the hearings, Norbert adjourns the hearings until mid-May to gather more evidence.</p> |
| | May – June | <p>SCBC hearings resume, but the new evidence was unorganized and critical connections to misbehavior were missing.</p> <p>Gray attempted to show DNC chairman John J. Raskob short-sold GM, but when he was unsuccessful in doing so, Democrats accused him of political maneuvering.</p> <p>As interest faded, Norbert barely convinces a majority of the SCBC to seek another \$50,000 to continue hearing until the end of the 72nd Congress in March of 1933.</p> <p>On 6/1, the RNC adopts its platform, which is absent any mention of the ongoing investigation of stock exchange practices or possible regulation.</p> <p>On 6/24, SCBC hearings adjourned and committee votes to discontinue the services of Gray and his investigators.</p> <p>Norbert assigns evidence gathering to James E. Stewart with instructions to keep expenses down, while awaiting the election results.</p> |
| | July | <p>NYSE Securities valued at \$16B, an 83% loss since 9/1/29.</p> <p>NYSE Bonds valued at \$31B, a 37% loss since 9/1/29.</p> |
| | Summer/Fall | <p>FDR wins election as 32nd President of the United States, campaigning largely on the “New Deal” platform of economic and social reform, including specific attention to securities reform. In accepting the Democratic nomination he cites the need “to protect the investing public” and “to restore public confidence” by “compelling full and fair disclosure to investors of all material facts” through</p> |

| | | |
|-------------|----------|--|
| | | <p>“the letting in of the light of day on issues of securities, foreign and domestic.” In particular, he emphasized disclosure through the repeated admonishment “Let in the light!”</p> <p>Hoover ignores the issue in all but the final week of his re-election campaign, when he finally reasserts his view that there is doubtful constitutional authority for federal securities regulation.</p> |
| | November | <p>After FDR’s election, Norbert makes plans to resume the SCBC hearings. Attempting to secure a new chief counsel, he offers the position to Harold Ickes (soon to be Secretary of the Interior), Samuel Untermyer (counsel to the Pujo Committee), and Samuel Seabury (recently successful in an NYC corruption case), who all declined. His fourth choice, Irving Ben Cooper, was an assistant to Seabury, accepts. Immediately after doing so, he announces he has engaged seven assistants and moves the headquarters to New York City. He resigns after Norbert refused his request for 500 blank, signed subpoenas and a liaison from the SCBC arrived in NYC, implying the SCBC was not committed to a genuine investigation.</p> |
| 1933 – 1934 | | <p>Throughout these two years, extensive hearings are held for the SCBC inquiry into stock exchange practices. Considerable legislation, originating both with FDR and Congress, relating to regulating securities practice is debated on the floors of both houses of Congress. Unlike the bulk of this stylized history surrounding the creation of the SEC, the verbatim full text of such hearings and debates will form the primary data sources for analysis. A schedule of such materials is provided in Chapter 5 and samples in Chapter 6 of this proposal.</p> |
| 1933 | January | <p>After conferring with SCBC Chair-elect Senator Duncan Fletcher, Norbert offered the position to Bainbridge Colby, who declined but recommended Ferdinand Pecora as “the most brilliant cross-examiner in New York”. On 24th, Pecora accepted and would remain chief counsel through the remaining hearings, giving rise to the common moniker of “The Pecora Commission” for the hearings and “The Hellhound of Wall Street” for himself.</p> |
| | February | <p>On 15th, hearings resumed with examination of Insull public utility and National City Bank.</p> <p>In Mid-February Michigan declares an eight-day bank holiday to curb of bank runs and gold withdrawals, which is subsequently extended.</p> <p>The second half of February saw bank holidays and closures in NJ, MO, MD, OH, PA, IN, and KY.</p> |
| | March | <p>On 3rd, Federal Reserve Board temporarily suspends gold requirement.</p> <p>On 4th, FDR inaugural address includes following: “Practices of the unscrupulous money changers stand indicted in the court of public opinion, rejected by the hearts and minds of men ... The money changers have fled from their high seats in the temple of our civilization. We may now RESTORE the temple to the ancient truths. The measure of the restoration lies in the extent to which we APPLY SOCIAL VALUES more noble than mere monetary profit.” (all emphasis added). Some of FDR’s language becomes embodied in the SEA34.</p> <p>By 4th, 35 states had declared bank holidays and all other states imposed withdrawal limits.</p> <p>On 5th, FDR invokes 1917 Trading with the Enemy Act to declare national bank holidays from March 6th through March 9th (later extended to 11th).</p> <p>On 12th, in first Fireside Chat, FDR suggested investment banking practices (like those of National City Bank’s Mitchell who recently testify in front of Pecora), caused the banks to close, although the crisis was actually with commercial banking.</p> |

| | | |
|------|-----------|---|
| | | On 13 th , FDR asks SCBC Chair Fletcher to expand scope of Pecora commission to include “all ramifications of bad banking” and urges AG Homer Cummings to prosecute based on the commission’s findings. |
| | April | On 4 th , spurred by J.P. Morgan & Co.’s refusal to provide documentation to the Percoa Commission based on the wording of the original Senate Resolution, and without a single word of debate, the Senate adopts a broadened resolution to give Pecora more latitude. |
| | May | On 27 th , the SE33, (also called the Truth in Securities Act) is signed into law, vesting the FTC with power to compel disclosure of financial information for new securities issues on primary market. |
| 1934 | June | On 6 th , Congress passes SEA34 which regulates securities exchange on secondary market and creates the Securities and Exchange Commission. FDR appoints, among others, Ferdinand Pecora, William O. Douglas, and Joseph Kennedy (as Chair) to the Commission. Some view the appointment of Joseph Kennedy seen as having the SEC co-opted by business at birth. |
| | September | On 4 th , SEC assumes control of Securities regulation in both SE33 and SEA34. |

Appendix C: Primary Data for Securities Exchange Act of 1934

| Item # | Type | Description | Pages |
|--------|---------------------|--|-------|
| 1 | Law | Public Law 22, 73 rd Congress, as approved June 6, 1934 | 29 |
| 2 | Law | United States Code Title 15, Sections 78a-78h As on books in 1970 | 43 |
| 3 | Senate Statement | Remarks of Sen. King on February 6, 1934 Introduction of S. 2642. | 1 |
| 4 | Senate Statement | Further remarks of Sen. King on February 7, 1934 Regarding S. 2642 | 1 |
| 5a | Executive Statement | Message from the President on February 9, 1934 Regulation of securities exchange | 1 |
| 5b | Senate Statement | Remarks of Sen. Fletcher on February 9, 1934 Introduction of S. 2693 | 9 |
| 6 | Exchange Statement | Letter from Richard Whitney of February 20, 1934 To NYSE Members inserted in Congressional Record | 2 |
| 7 | Senate Debate | Sens. Couzens and Fletcher on February 22, 1934 In response to “Propaganda campaign” | 2 |
| 8 | House Debate | H.R. 9323 between April 30 and May 4, 1934 Consideration, amendment, & passage | 146 |
| 9 | Senate Statement | Remarks of Sen. Thomas on May 4, 1934 Introduction of amendment to S. 3420 | 1 |
| 10 | Senate Debate | S. 3420 & H.R. 9323 on May 7-12, 1934 Consideration, amendment, & HR9323 passage in lieu | 202 |
| 11 | House Debate | H.R. 9323 debate in House on May 14, 1934 Reject Senate amendment, request conference | 1 |
| 12 | Senate Debate | H.R. 9323 debate in Senate on May 14, 1934 Insistence on amendment, agree to conference | 1 |
| 13 | Senate Report | Conference report between May 30 and June 1, 1934 Senate Doc. No. 185 submitted and agreed to | 22 |
| 14 | House Report | Conference report on May 31 and June 1, 1934 Submitted and agreed to | 23 |

| | | | |
|-----|------------------|---|-----|
| 15 | Senate Report | Letter from SBCC Counsel on February 18, 1933 Stock Exchange Practices, per S. Res. 84, 72 nd Congress | 3 |
| 16 | Executive Report | Letter from President on January 25, 1934 Accompanied by Commerce Dept's "Dickerson Report" | 23 |
| 17 | Senate Report | S. Report #792, 73 rd Congress on April 20, 1934 To accompany S. 3420 | 24 |
| 18 | House Report | H.R. Report #1383 on April 27, 1934 To accompany H.R. 9323 | 32 |
| 19 | Senate Report | S. Report #185 on May 30, 1934 Conference Report | 29 |
| 20 | House Report | H.R. Report #1838 on May 21, 1934 Conference Report | 42 |
| 21 | Senate Report | S. Report #1455 on June 16, 1934 "Fletcher Report" of S. Banking and Currency Committee | 394 |
| 22a | Senate Hearings | Hearings between February 26 and March 7, 1934 Held by S. Banking and Currency Committee | 675 |
| 22b | Senate Hearings | Hearings between March 8 and April 5, 1934 Held by S. Banking and Currency Committee | 660 |
| 23a | House Hearings | Hearings between February 14 and March 1, 1934 Held by H.R. Interstate and Foreign Commerce Committee | 447 |
| 23b | House Hearings | Hearings between March 2 and March 2, 1934 Held by H.R. Interstate and Foreign Commerce Committee | 593 |
| 24 | House Bill | H.R. 7852 introduced by Rep. Rayburn on February 10, 1934 Referred to H.R. Interstate & Foreign Commerce Committee | 50 |
| 25 | House Bill | H.R. 7855 introduced by Rep. Sabath on February 10, 1934 Referred to H.R. Interstate & Foreign Commerce Committee | DUP |
| 26 | House Bill | H.R. 7924 introduced by Rep Sabath on February 13, 1934 Referred to H.R. Interstate & Foreign Commerce Committee | 16 |
| 27 | House Bill | H.R. 8575 introduced by Rep. Bulwinkle on March 10, 1934 Referred to H.R. Interstate & Foreign Commerce Committee. | 9 |
| 28 | House Bill | H.R. 8720 introduced by Rep. Rayburn on March 19, 1934 Referred to H.R. Interstate & Foreign Commerce Committee | 63 |
| 29 | House Bill | H.R. 9323 introduced by Rep. Rayburn on April 25, 1934 Referred to H.R. Interstate & Foreign Commerce Committee | 61 |
| 30 | House Bill | H.R. 9323 as reported on April 27, 1934 House Report #1383 | DUP |
| 31 | House Bill | H.R. 9323 as passed on May 7, 1934 Ordered to lie on the table in the Senate | DUP |
| 32 | House Bill | H.R. 9323 as passed Senate on May 14, 1934 With Senate amendments | 137 |
| 33 | Senate Bill | S. 2642 introduced by Sen. King on February 7, 1934 Referred to S. Banking and Currency Committee | 15 |
| 34 | Senate Bill | S. 2693 introduced by Sen. Fletcher on February 9, 1934 Referred to S. Banking and Currency Committee | 50 |
| 35 | Senate Bill | S. 3234 introduced by Sen. Gore on March 29, 1934 Referred to Senate Interstate Commerce Committee | 9 |
| 36 | Senate Amend. | Amendment by Sen. Kean on April 17, 1934 Intended to be proposed to S. 2693 | 40 |
| 37 | Senate Bill | S. 3420 introduced as reported on April 20, 1934 | 57 |

| | | | |
|-------------|--------------------|--|-----|
| | | Clean bill as reported in S. Report #792 | |
| 38 | Senate Amends. | Amendments by various Senators April 24 – May 7, 1934 Intended to be proposed to S. 3420 | 180 |
| 39 | Senate Hearings | Hearings between May 26 and June 9, 1933 Held by S. Banking and Currency Committee These hearings were not included in the legislative history, but are part of the “Pecora Commission” | 649 |
| 4,642 pages | | | |